SUPREME COURT OF THE UNITED STATES.

No. 11.

CADWALLADER WALLACE, PLAINTIFF IN ERROR,

VERSUS

JOSIAH C. PARKER.

IN ERROR TO THE SUPREME COURT FOR THE STATE OF OHIO.

INDEX.

	Original.	Print.
Writ of error	1	2
Citation and service	2	3
Title; transcript of the record of the court of common pleas; bill in chancery by Josiah C. Parker, complainant	3	4
Writ of subpœna; injunction allowed	5	6
Answer of Cadwallader Wallace	5	6
Order of survey	6	8
Supplementary answer of C. Wallace	7	8
Replication	7	9
Decree of court of common pleas	7	9
Amended bill of complainant in supreme court of Ohio for Brown county	8	10
Answer to amended bill	8	10
Dedimus to take depositions	9	11
Decree of Supreme Court	10	11
Last will and testament of Josiah Parker	11	12
Land warrant to Colonel Josiah Parker for 6,666⅔ acres	13	14
Ditto.....Isham Keith for 2,666⅔ acres	14	16
Mace Clements' entry of 1,000 acres	15	16
James Poage's....do.....do	15	16
William Vause's..do.....do	15	16
Isham Keith's....do.....do	15	17
Josiah Parker's entries of 1,000 and 450 acres	15	17
Henry Heth's entry of 1,000 acres	15	17
James Curry's...do.....do	16	17
Henry Heth's survey of 1,000 acres	16	18
James Curry's...do.....do	16	19
Josiah Parker's do....490	17	20
Patent to Josiah Parker	17	20

Deposition of Samuel Frazee.....18.....21
Squire Frazee.....20.....23
Thomas Young.....20.....23
Luther Calvin.....21.....24
Nicholas Washburn.....23.....27
William Middleton.....23.....27
Joseph Washburn.....24.....28
Stephen Calvin.....25.....29
James Calvin.....25.....29
Solomon Cox.....26.....30
Notice of survey.....26.....31
Survey and notes of William Wall.....27-8.....31
Survey and report of J. Beasley.....29-30.....32
Patent to C. Wallace for 300 acres.....31.....34
Petition of Josiah Parker to the General Assembly of Virginia.....32.....35
Report thereon.....32.....35
Commission to take depositions.....33.....36
Deposition of William H. Richardson.....34.....37
Document A, referred to in Richardson's deposition.....37.....42
Certificate of clerk.....38.....42

The United States of America to the Honorable the Judges of the Supreme Court of the State of Ohio, sitting in and for the county of Brown, greeting:

I allow this writ; let it be sealed; and approve of Anthony Walke as security, in the penalty of one thousand dollars.

CALVIN PEASE,
Chief Judge of the Supreme Court of the State of Ohio.

Whereas, in the record and process, and also in the rendering the decree in a certain suit in chancery, which was in the said court, between Josiah C. Parker, plaintiff, and Cadwallader Wallace, defendant, manifest error hath intervened, as it is said, to the great damage of the said Cadwallader Wallace, as by his complaint we are informed; and we being willing that the error aforesaid (if any) be corrected, and full and speedy justice be done in this behalf to the said parties, command you that the record, process, and decree, aforesaid, with all things touching the same, under your seals, distinctly and plainly, without delay, you send and certify to the Judges of the Supreme Court of the United States on the first day of the next term of said court, so that the decree aforesaid being inspected, the court may further, for correcting the error aforesaid, do that which of right and according to law ought to be done.

Witness the Hon. John Marshall, Chief Justice of the United States of America, this third day of January, in the year of our Lord one thousand eight hundred and twenty-nine.

[L. S.] JOHN H. SHEPHERD, *Clerk S. C. B. C. O.*

66

SUPREME COURT UNITED STATES.

CADWALLADER WALLACE
vs.
JOSIAH C. PARKER. } *Citation.*

THE UNITED STATES OF AMERICA.

Supreme Court of the United States to Josiah C. Parker, greeting:

Whereas Cadwallader Wallace obtained our writ of error to the supreme court of Ohio for the county of Brown, directed to remove into the Supreme Court of the United States, to be holden at the city of Washington on the second Monday in the month of January next, the record of a certain plaint, process, proceedings, and decree, in a certain suit in chancery, wherein you, the said Josiah C. Parker, was complainant, in that action or suit in chancery lately recovered against the said Cadwallader Wallace, and costs, as by the said record, in the said Supreme Court aforesaid remaining, appears, in which said record and proceedings, and also in the rendition of the decree thereupon, manifest error hath intervened, as by the said Cadwallader Wallace we are informed, and our said writ of error granted, issued, and allowed, as aforesaid, for the purpose of correcting the errors aforesaid alleged, if any there be; you are therefore hereby commanded and cited to be and appear before the Judges of the said Supreme Court, at the city of Washington, at the next term of said court, to be holden on the second Monday in the month of January next, to have the errors aforesaid corrected, and the judgment or decree of our said Supreme Court thereupon.

Witness the Hon. JOHN MARSHALL, Chief Justice of the United States of America, this third day of January, in the year of our Lord one thousand eight hundred and twenty nine.

[L. S.]

CALVIN PEASE,
Chief Judge of the Supreme Court of the State of Ohio.

Attest: JOHN H. SHEPHERD,
Clerk of Brown Supreme Court.

I acknowledge service of the within. April 21st, 1829.
M. MARSHALL, *Att'y for Parker.*

At a special session of the Supreme Court of the State of Ohio, held at the court-house in the town of Columbus, in Franklin county, in said State, by the Honorable Calvin Pease, Peter Hitchcock, Jacob Burnet, and Charles R. Sherman, Judges of the Supreme Court of the State of Ohio, at the term of November, in the year of our Lord one thousand eight hundred and twenty-eight, being the twenty-seventh year of said State, and in the fifty-third year of the independence of the United States of America.

JOSIAH C. PARKER, complainant,
vs.
CADWALLADER WALLACE, defendant. } *In chancery, on appeal.*

BROWN COUNTY SS.

Be it remembered, that heretofore, to wit, on the twenty-ninth day of March, in the year of our Lord one thousand eight hundred and twenty-seven, the appellant Cadwallader Wallace, produced and filed in the

clerk's office here a transcript of the record and proceedings had in this cause in the court of common pleas for the county of Brown, which said transcript is in the words and figures following, to wit:

Brown Common Pleas, August term, A. D. 1826.

JOSIAH C. PARKER, *vs.* CADWALLADER WALLACE. } *In chancery.*

Pleas held at the court-house in Georgetown, in the county of Brown, and State of Ohio, before the Honorable George P. Torrence, president Judge of the ninth judicial circuit, James Finley, and Robert Brackenridge, Esquires, associate Judges of the court of common pleas in and for the county aforesaid, on the second day of September, in the year of our Lord one thousand eight hundred and twenty-six, in the fifty-first year of the independence of the United States of America, and in the twenty-fourth year of this State.

BROWN COUNTY, ss.

Be it remembered, that heretefore, to wit, on the twenty-third day of March, in the year one thousand eight hundred and twenty-six, the complainant, by Martin Marshall, Esq., his counsel, produced and filed here in the clerk's office his certain bill in chancery against Cadwallader Wallace, which said bill in chancery is in the words following, to wit: To the honorable the judges of the court of common pleas in and for the county of Brown, State of Ohio, in chancery sitting: your petitioner, Josiah C. Parker, formerly Josiah Cowper, complaining, respectfully sheweth unto your honors that a certain Josiah Parker, grandfather to your orator, on or about the 12th day of January, 1788, caused to be made with the proper officer an entry or location, No. 1703, in the following words and figures, to wit: Josiah Parker enters 1,000 acres of land, part of a military warrant No. 1920, &c. to an attested copy of which, for greater certainty, your orator refers, and prays the same may be taken as part of this his bill, which entry or location includes land now lying and being in the county aforesaid, and is within what is usually called the military district, and which location or entry, your orator is informed and believes, and expressly charges, is special and valid, and contains all the requisites of the laws under which it was made, and is a legal appropriation of the land in and by said entry or location embraced. Your orator would further shew, that his grandfather, Josiah Parker, on or about the day of , departed this life, having made and duly executed his last will and testament, which was duly proven and admitted to record in the proper office, and a copy of which duly admitted to record in the proper office of said county of Brown: all of which will more fully and at appear by an attested copy of said will; to which, for greater certainty, your orator would also refer, and prays the same may be taken and considered as a part of this bill. By which said will your orator's grandfather devised said 1,000 acres of land, with other real estate, to your orator, by the name and description of Josiah Cowper, upon condition your orator would take the name of Josiah Parker, which condition your orator has performed. Your orator would further shew, that, on the day of , the said deceased caused said 1,000 acres of land to be surveyed by the proper officer, strictly according to the aforesaid entry and law, but the

surveyor who executed said survey, for some cause unknown to your orator, and contrary to the wish of your orator, and that of the deceased, and contrary to the duty of said surveyor, failed to return the plat and certificate of said survey, or some part thereof, to the proper office for record. That your orator's grandfather, by his tenants, or those claiming under him, took possession of said 1,000 acres of land, and have made valuable and lasting improvements thereon, of the value of dollars, as reported by commissioners to value the same by your honors, to which your orator would refer, and pray may be taken as part of this bill; and have enjoyed the same quietly, until a certain Cadwallader Wallace, (who your orator prays may be made defendant to this bill,) well knowing the facts before stated, fraudulently, on the day of , and long subsequent to the making the survey aforesaid of your orator's entry aforesaid, and to the making said improvements, and whilst the same was in possession of the tenants, or persons claiming under your orator, caused to be located part of the land so located and appropriated as aforesaid by your orator's grandfather, and now the property of your orator, and has obtained a grant for the same fraudulently and corruptly, and has upon such fraudulent grant (your orator not having yet obtained a grant for the whole of the 1,000 acres, so as aforesaid entered and surveyed) prosecuted a writ of ejectment against one Thomas Doniphan and others (who were in possession under your orator,) in the court of common pleas for said county, and to defend for whom your orator made himself, with one Ann P. P. Cowper, defendants; and at the term of the court of common pleas aforesaid, said defendant recovered judgment in said action of ejectment: all of which will appear by an attested copy of the proceedings in said action of ejectment, to which your orator refers, and prays may be taken as part of this bill. And now said defendant threatens, and your orator believes will turn your orator's tenants out of possession, unless prevented by the timely interference of your honors. All which actings, &c., of said defendant are contrary to equity, &c.

In tender consideration whereof, and for as much as your orator is remediless in the premises at law, and only and properly relievable in equity before your honors, where matters of this kind are properly cognizable: To the end, therefore, that said defendant may be compelled, upon his corporal oath, full, true, direct, and perfect answer to make to all and singular the allegations aforesaid, as fully as though again repeated and put by way of interrogatories; set forth, shew, and exhibit his location, with its date; may it please your honors, the premises considered, to grant to your orator the writs of subpœna and injunction, directed to said defendant and others concerned, commanding all further proceedings on the judgment in the action of ejectment aforesaid be stayed until the matters hereof can be heard in equity, and, upon final hearing, by your decree, render said injunction perpetual, and compel said defendant to release the title thus fraudulently obtained by him as aforesaid to your orator; and, in the event of your honors sustaining the claim of said defendant, compel him to pay your orator for all lasting and valuable improvements made upon said land; and grant to your orator such other and further relief in the premises as his case in equity requires; and your orator, as in duty bound, shall ever pray, &c.

M. MARSHALL, *Attorney for complainant.*

STATE OF OHIO, *Brown county*, sct.

The within named Josiah Parker personally appeared before me, the subscriber, a justice of the peace for said county, and made oath that the

facts stated in the within bill as of his own knowledge are true, and those stated as from the information of others he believes to be true.

JOSIAH C. PARKER.

Sworn to and subscribed by deponent, before me, this 22d day of March, 1826.

[L. s.] JAMES FINDLEY, *Associate Judge.*

Let an injunction issue on the within bill, upon the complainant giving bail according to law. March 22d, 1826.

[L. s.] JAMES FINLEY,
Associate Judge Brown county.

And whereas, afterwards, to wit, on the twenty-fourth day of March, in the year of our Lord one thousand eight hundred and twenty-six, the complainant, by his counsel aforesaid, sued out of the clerk's office his certain writ of subpœna in chancery against the said Cadwallader Wallace, directed to the sheriff of Brown county, which said writ of subpœna in chancery issued in the words following, to wit: [Seal of office.] The State of Ohio, Brown county, ss. To the sheriff of Brown county, greeting: We command you that you summon Cadwallader Wallace to appear before the judges of our court of common pleas, at the court-house, on the seventeenth day of April next, to answer a petition in chancery exhibited against him by Josiah C. Parker; and this he shall in no wise omit, under the penalty of one thousand dollars; and have then there this writ. Witness the Honorable George P. Torrence, president Judge of our said court, at the court-house, this 24th day of March, A. D. 1826.

WILLIAM SHEPHERD, *Clerk.*

Injunction allowed; bail given.

WILLIAM SHEPHERD, *Clerk.*

And the sheriff of Brown county, to whom the said writ of subpœna in chancery was directed, returned the same on the first day of the next succeeding term, with the following endorsement thereon, to wit: "Nihil, Robert Allen, sheriff."

And whereas, afterwards, to wit, at a court of common pleas held at the court-house in and for the county aforesaid, in the year of our Lord one thousand eight hundred and twenty-six, came as well the complainant by his counsel aforesaid, as the defendant by Thomas Morris, Esq., his attorney, and produced and filed here in court his certain answer to the complainant's bill, which said answer is in the words following, to wit: The answer of Cadwallader Wallace to the bill of complaint exhibited against him in the honorable court of common pleas of the county of Brown, in the State of Ohio, by Josiah C. Parker, formerly Josiah Cowper. This respondent, now and at all times hereafter saving and reserving to himself all and all manner of benefit of exception to the many errors, untruths, and imperfections in the complainant's said bill of complaint contained, for answer thereunto, or unto so much thereof as he is advised it materially concerns him to make answer unto, he, answering, saith: he admits it to be true that an entry, No. 1703, for 1,000 acres of land, was, on or about the day specified in complainant's bill, made in the proper office, in the name of Josiah Parker; but he does not admit that said entry was special and valid, and therefore prays that complainant be put to the full measure of proof.

As to those parts of complainant's bill which charge that Josiah Parker, grandfather of the complainant, on the day of , departed this life, having made and duly executed his last will and testament; that said will had been duly proved and admitted to record in the proper office, and a copy of it duly admitted to record in Brown county; that by said will said 1,000 acres of land, with other real estate, was devised to complainant by the the name and description of Josiah Cowper, upon condition that complainant would take the name of Josiah Parker, which condition complainant had performed, this respondent is unable to answer yea or nay, and therefore prays that complainant may be put to prove these allegations in said bill. To the allegations in complainant's bill, that, on the day of , the said deceased caused said 1,000 acres of land to be surveyed by the proper officer, strictly according to the said entry and law; but the surveyor who executed said survey, for some cause unknown to complainant, and contrary to the wish of the complainant, and that of the deceased, and contrary to the duty of said surveyor, failed to return the plat and certificate of said survey, or some part thereof, to the proper office for record, this respondent, further answering, saith, that he is advised, believes, and so charges the fact to be, that said allegations are not true; on the contrary, he is advised, believes, and so charges the fact to be, that, if said entry was special and valid, that no part of the land which it would cover was included in the survey which was made, returned, and recorded, and which purported to have been made on the land covered by said entry, nor does said entry, if good, as this respondent is advised and believes, cover any of the land patented to this respondent. As to the allegations in complainant's bill, that complaintant's grandfather, by his tenants or those claiming under him, took possession of said 1,000 acres of land, and have made lasting and valuable improvements thereon, of the value of $, as reported by commissioners, this respondent is unable to say yea or nay; and therefore prays complainant may be required to make full proof of his allegations.

This respondent saith it is not true, as charged in complainant's bill, that he, this respondent, well knowing the facts before stated, fraudulently, on the day of , and long subsequent to making the survey on Parker's said entry aforesaid, and the making said improvements, and whilst the same was in possession of the tenants, or persons claiming under complainant, caused to be located part of the land so located and appropriated as aforesaid by complainant's grandfather; on the contrary, he saith that he made the entry under which he now claims to hold the land before he ever went on the ground to examine it. He made this entry in good faith, after discovering the land was vacant, by platting off the whole chain of entries: since making his entry, he has discovered that certain individuals were in possession, but under whom, or by what title they obtained possession, he is unable to state. He denies that complainant is entitled to pay for any improvements which have been made on the land, unless it shall appear that the entry under which he claims does cover the improvements which have been made. This respondent admits that he has obtained a patent, and recovered in ejectment, and insists that his title is good, both in law and in equity.

As complainant has not executed and returned a survey on his said entry, and procured a patent, as appears from his own shewing, this respondent is advised that he cannot claim the interference of this honorable court. This respondent denies all fraud and unlawful combination and confederacy,

wherewith he stands charged; without that that, &c. And having fully answered the complainant's bill, he prays that the injunction obtained (if any such has been obtained) may be dissolved, complainant's bill dismissed, and that this respondent go hence without day, and recover of the complainant his costs by him about his defence in this behalf most wrongfully obtained, &c.

CADWALLADER WALLACE.

STATE OF OHIO, *Ross County*, ss.

Before me, one of the justices of the peace in and for the township of Scioto, in the county aforesaid, personally came Cadwallader Wallace, the respondent above named, who being duly sworn as the law directs, deposeth and saith that the facts stated by him in his foregoing answer to be of his own knowledge are true, and such as he has stated to be from the information of others he believes to be true: and further this deponent saith not. Sworn and subscribed before me, this 17th day of April, 1826. Witness my hand and seal.

JAMES MILLER, *J. P.* [SEAL.]

And thereupon, on motion, the complainant is ruled to file his replication in this cause in thirty days; and on further motion, it is ordered that the county surveyor survey the lands and tenements in dispute, as either party may direct, upon either party giving the opposite party five days' notice of the time and place of doing the same, and having regard to all deeds, patents, and other evidences of claim; and that report be made to this court at the next term: and thereupon the cause aforesaid was continued until the next August term; and the same day given the parties aforesaid at the same place.

And whereas, afterwards, to wit, on the ninth day of May, in the year one thousand eight hundred and twenty-six, the defendant produced and filed here in the clerk's office his supplementary answer to the complainant's bill of complaint, which supplementary answer is in the words following, to wit: The supplementary answer of Cadwallader Wallace to the bill of complaint exhibited against him, in the court of common pleas of the county of Brown aforesaid, by the complainant Josiah C. Parker. This respondent, further answering, states, that the entry on which his patent for the lands in controversy is founded is in the words and figures following, to wit: 1823, July 23d, No. 12,305, Peter P. Mayo, assignee, enters 300 acres of land on part of a military warrant No. 6,537, on the waters of Red Oak creek, beginning at the most southerly corner of Josiah Parker's survey No. 1,703, thence south 29 E. to the line of Presley Nevell's survey No. 1,431, thence N. 61 E. and from the beginning N. 61 E. so far that a line south will include the quantity; to a copy of which, herewith filed, he prays reference for a greater certainty, as part hereof. This defendant denies all fraud, &c., without that that, &c. And having fully answered the complainant's bill, he prays to be hence dismissed, with his reasonable costs and charges in this behalf most wrongfully sustained.

STATE OF OHIO, *Ross county*, ss.

Personally appeared before me, the undersigned, one of the justices of the peace in and for the township of Scioto, in the county aforesaid, personally appeared Cadwallader Wallace, the respondent above named, who being duly sworn according to law, deposeth and saith that the facts stated by him in his foregoing supplementary answer to be from his own knowledge are

true, and such as he has stated to be from the information of others he believes to be true: and further this deponent saith not.

CADWALLADER WALLACE.

Sworn and subscribed before me, this 26th day of April, 1826.

JAMES MILLER, *J. P*

And whereas, afterwards, to wit, on the 26th day of August, in the year one thousand eight hundred and twenty six, the complainant produced and filed here in the clerk's office his certain replication to the answer of the defendant, which said replication is in the words following, to wit: The complainant says that the allegations set forth in his said bill of complaint are true; and that the answer of said defendant, denying said allegations, are untrue, and this said complainant is ready to verify and prove, &c.

M. MARSHALL, *for complainant.*

And now, on this day, that is to say, the second day of September, in the year of our Lord one thousand eight hundred and twenty-six, until which time the cause aforesaid was continued, this cause this day was heard upon the bill, answer, and exhibits filed, (the signature of Richard C. Anderson to entries filed being proven in open court,) and the arguments of counsel on both sides being heard, the court, upon mature consideration, are of opinion, that the law and equity of the case, for all the land embraced within the following bounds, are with the complainant, to wit: beginning at two beech trees, corner to said defendant, and also corner to a survey in the name of Josiah Parker; thence south twenty-nine degrees east, one hundred and forty poles, to two beech trees and a poplar, another of said defendant's corners; thence north sixty-one degrees east, with another of said defendant's lines, three hundred and twenty-two poles, to a sugar tree and buckeye, another of said defendant's corner's; thence with said defendant's line, north one hundred and thirty poles, and within forty-two poles of his corner, an ash and two sugar trees; thence north twenty-nine degrees west, thirty-six poles, to the line of said defendant, which is also a line of said Parker's survey, and which is twenty poles from the last named corner of said defendant; thence with said line, south sixty-one degrees west, to the beginning. The court do therefore order and decree that the complainant's injunction for the land aforesaid, and the costs of the suit at law, be rendered perpetual, and that said defendant do, by deed duly executed, within thirty days release to the complainant the land herein before described by metes and bounds; and, in case of failure of said defendant to execute such release, that then and in that event this decree shall operate as such release; and it is further ordered and decreed by the court, that the defendant pay the complainant his costs by him about his suit in this behalf expended, also his costs about his defence in the action at law expended, within thirty days, and, in case of failure, that said complainant have execution for said costs, and the parties are hence dismissed. And thereupon the defendant, by his counsel, gave notice that he would appeal from the decree aforesaid to the Supreme Court next to be holden in and for the county of Brown. Clerk's fees $6 56; sheriff's fees 32 cents; docket fee $5 00; surveyor's fees $43 41; justice's fees $2 75; M. commissioner's fees $1 75; witnesses' fees $3 00; copy of will $1 30; seal and tax on depositions $1 00; J. Egbert, constable, 65; total costs $66 74.

GEORGE P. TORRENCE, *President Judge.*

STATE OF OHIO, *Brown county*, sct.

I, William Shepherd, clerk of the court of common pleas in and for the county aforesaid, do hereby certify that the foregoing is truly copied from

the records of said court, in the case to which it relates, and that the appellant has given bond with security, conditioned as the law directs. In testimony whereof, I have hereunto set my hand, and affixed the seal of said court, at Georgetown, this 26th day of March, 1827.

WILLIAM SHEPHERD, *Clerk B. C.*

And whereas, afterwards, to wit, at a Supreme Court held at the court-house in Georgetown, in the county of Brown, at May term, in the year of our Lord one thousand eight hundred and twenty-seven, this day came the parties by their counsel aforesaid, and by consent of parties the complainant produced and filed his amendment to his bill, and the defendant his answer thereto, in the words following, to wit:

STATE OF OHIO, *Brown county*, ss.

May term of the Supreme Court for said county, 1827.

JOSIAH C. PARKER, *complainant*,
against
CADWALLADER WALLACE, *defendant*, } *In chancery.*

The complainant, by leave of the court, amends his bill, by shewing further to your honors, that, since filing his original bill, owing to the neglect of duty on the part of the surveyor who made the survey of your orator's entry, as stated in said bill, in not returning to the proper office the plat and certificate of survey, and the inability of your orator to obtain the same or a copy thereof, your orator on the 14th day of June, in the year 1826, caused his entry, or the remainder thereof, to be surveyed by the proper officer according to law, and in strict conformity to his said entry; and on the first day of February, in the year 1827, your orator obtained a grant or patent therefor from the proper officer authorized to issue the same, bearing date the day and year last aforesaid. Your orator prays said defendant may be compelled to answer the foregoing allegations, &c. &c.

MARSHALL & GILLILAND, *for complainant.*

Brown Supreme Court, May Term, 1827.

CADWALLADER WALLACE, *defendant*,
vs.
JOSIAH C. PARKER, *complainant*. } *In chancery, on appeal.*

This respondent, now and at all times hereafter saving and reserving to himself all manner of benefit and advantage of exception to the many errors, &c., in the complainant's original and amended bill, for answer thereto, or unto so much thereof as he has not already answered, and as he is advised it materially concerns him to make answer unto, he, answering, saith: he has heard, and believes it to be true, that, since the commencement of this suit, the complainant, to wit, on the 14th day of June, 1826, caused a survey to be executed, which purports to have been made on the residue of the entry in his original bill named, on which his claim is based, and has since obtained a patent thereon; but, as this respondent is not personally acquainted with these facts, he requests that the complainant may be put to the full measure of proof. He further charges, that he is informed, and believes it to be true, that, if the complainant's entry does contain that certainty and precision which the law requires in order to constitute a valid entry, yet that the complainant has no equitable claim to the lands in question, because,

70.

first, said entry is based upon a resolution warrant, which is not protected by any act of Congress, and cannot therefore be a foundation on which to base a valid entry; and, second, said survey does not cover the land embraced by said entry. This respondent denies all fraud, &c., and having fully answered, prays to be hence dismissed, &c.

THOMAS SCOTT, *for respondent.*

The State of Ohio, Brown Supreme Court, May term, 1827.

Personally appeared in open court Cadwallader Wallace, the respondent above named, who, being duly sworn as the law directs, deposeth and saith that the facts stated by him in his foregoing answer to be from his own knowledge are true, and so far as he has therein stated them to be from the information of others he believes them to be true. And further this deponent saith not. CADWALLADER WALLACE.

Sworn and subscribed before me, this 10th day of May, 1827.

JOHN H. SHEPHERD, *Clerk.*

And by consent of parties, it is ordered that a dedimus issue, directed to the Mayor of the city of Richmond, in the Commonwealth of Virginia, James E. Heath and John Herron, or either of them, commanding them to take the depositions of the Register of the land office of the Commonwealth of Virginia and others, to be read as evidence on the trial of this cause; and it is further ordered, by consent of the parties, that the county surveyor for Brown county survey the lands and premises in the complainant's bill mentioned as either party may direct, having regard to all evidences of title, and the opposite party having five days' notice of the time and place of doing the same. And thereupon the cause aforesaid was continued until the next May term, and the same day given the parties aforesaid at the same. At which time, to wit, at May term, in the year of our Lord one thousand eight hundred and twenty-eight, by consent of parties this cause is reserved to be heard and decided at the special session of this court at Columbus; and it is agreed that the defendant in this suit be at liberty to take any evidence they may deem necessary for their defence relative to records and documents in any public office in Virginia, and that the same shall be read on the hearing in the same manner as if taken previous to the commencement of this term. The defendant is also at liberty to have executed at his own expense a resurvey of the lands and premises in controversy, and of the claims on which they depend, and to return plats thereof to be read on the hearing; notice of survey to be given five days previous to making the same; depositions taken as aforesaid to be taken without notice, and may be opened by either party.

And now on this day, that is to say, at a special session of the Supreme Court of the State of Ohio, held in the town of Columbus, of the term of November, in the year of our Lord one thousand eight hundred and twenty-eight, this day came the parties by their solicitors, and the court having seen the record and exhibits, and heard the arguments of counsel, and fully deliberated thereon, are of opinion that the law and equity of the case are with the complainant. It is therefore ordered, adjudged, and decreed, that the injunction granted in this cause be made perpetual, and that the defendant, within six months from the making of this decree, execute and deliver to the complainant a deed of release of all his right and title to so much of the land embraced in his patent set out in the pleadings as covers or interferes with any of the land claimed by the complainant, and included in his

entry, as surveyed by Stephen Beasley on the third day of July, 1828, by the magnetic meridian, and returned to this court; and it is ordered that the complainant pay the costs of the suit at law, and, that the defendant pay the costs of this suit, and that execution may be taken for recovery thereof; and it is ordered that a certified copy of this entry be sent to the clerk of the Supreme Court in and for the county of Brown, who is hereby directed to send a summary transcript thereof to the court of common pleas for execution.

STATE OF OHIO, *Franklin county, ss.*

I, Abram J. McDowell, clerk of the Supreme Court in and for the said county, do certify that the foregoing is truly copied from the record in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of my office, at Columbus, this 22d day of December, A. D. 1828.

ABRAM J. McDOWELL, *Clerk.*
CALVIN PEASE, *Chief Judge.*

EXHIBITS.

At a court of common pleas, held at the court-house in Georgetown, in the county of Brown, and State of Ohio, before the Hon. Joshua Collett, president Judge of the seventh judicial circuit of the State of Ohio, William Anderson, James Finley, and Robert Breckenridge, Esquires, associate Judges of the court of common pleas within and for the county aforesaid, on the fourteenth day of April, in the year of our Lord one thousand eight hundred and twenty-five, being the forty-ninth year of the independence of the United States of America, and in the twenty-third year of the State of Ohio—this day an authenticated copy of the last will and testament of Josiah Parker, late of the county of Isle of Wight, Virginia, deceased, was produced in court, and admitted to record, to wit:

I, Josiah Parker, of the county of Isle of Wight, and State of Virginia, do make this my last will and testament, that is to say: 1st, I give to my daughter, Ann P. P. Cowper, the following negroes, Sabinah, Edward, Charlotte, Albert, Sidney, and Patience, to her and her heirs for ever; also, the following articles of furniture, viz: an elegant set of cut glass, imported from London, with the initials of her name on them; also, all the French plate in my house, and all the pictures and frames, except the military ones, and all the old plate, sound or unsound, that belonged to her mother at the time I married her; also, her pick of six cows, including her own; six ewes, a sow and pigs; five beds, including what she has made herself; and the best mahogany bedstead, and the black walnut bedstead which I generally sleep on myself, with one common bedstead, together with all the furniture generally attached to them; also, a small platto of Pompadour colored china, and a broken set of pencilled china; also, my harp, piano forte, and all the music. All the above articles I give to her and her heirs for ever; also, two hundred and fifty dollars in cash, to be paid her by my executor in the manner she may require it. I also lend to my said daughter the use of my dwelling house, garden, yard, new stable, and stable loft; also, the use of my negroes Isaac and Eady, as long as she chooses to remain on the place; but if she leaves it, they then must revert to the persons to whom the land is given, as hereinafter mentioned. I also allow her the use of firewood and fencing stuff, railing, pasturage for her stock, and such fruit as

she may choose, necessary to be eat in the house. I also give to her one hundred pounds a year, to be paid her out of my estate by my executor, quarterly, to her order only, to commence on the first day of January next. In the mean time, all my estate is to be kept entire, except such portion as my executor, with the advice of my daughter, may think it to the interest of the estate to have disposed of. 2d, All the rest of my estate, both real and personal, I give to my grandson, Josiah Cowper, who is to take the sirname of Parker. 3d, I constitute and appoint my grandson-in-law, Joseph Baker, of the county of Nansemond, my executor to this my last will and testament, with full power to dispose of all my lands in the States of Ohio and Kentucky, and also Randolph county, Virginia; also, my proportion of the lots in the city of Washington purchased of Stoddard by Duke Wheeler, John Cowper & Company. And it is my desire that the said property may be disposed of as soon as possible, and the residue of the money arising from the sale of the same, after first paying my just debts, may be applied to the improvement of my Isle of Wight estate. It is also my will and desire, that all or any part of my houses and lots situate in the towns of Norfolk, Portsmouth, and Gosport, be sold, provided my daughter, and Thomas Pierce, of the town of Smithfield, shall think it proper and for the benefit of my estate for them to be so; and the money arising from the sale thereof to be used in the improvement of my estate in the Isle of Wight, or in the purchasing such other estate or property as may be most for the benefit of my aforementioned grandson, Josiah Cowper, who I again declare to be my whole and sole legatee of all my estate, real and personal, except as has been otherwise above disposed of, on the express condition of his taking the sirname of Parker. Given under my hand and seal at Macclesfield, Isle of Wight county, this 8th day of March, one thousand eight hundred and ten.

JOSIAH PARKER. [SEAL.]

In presence of—

THOMAS PIERCE, RICH'D H. BAKER,
his
JOSEPH ⋈ PITT, J. B. SOUTHALL.
mark.

N. B. That no doubt may arise respecting my intention in giving one hundred pounds a year to my daughter, I hereby declare that it is intended by me to continue it for and during her life.

JOSIAH PARKER.

J. B. SOUTHALL,
THOMAS PIERCE.

At a court held for Isle of Wight county the 2d day of April, 1810, this will was presented in court and proved by the oaths of Thomas Pierce and James B. Southall, two of the witnesses thereto, and ordered to be recorded, and time allowed Joseph Baker, the executor therein named, to qualify when he shall think fit. And at a court held for the said county the 7th day of May, 1810, the said Joseph Baker came in court, and refused to take upon himself the burthen of the execution of the will aforesaid: whereupon, on motion of the said Joseph Baker, who made oath thereto according to law, and who, together with Thomas Pierce and Thomas Hancock, his securities, entered into and acknowledged a bond in the penalty of twenty thousand dollars, with condition as the law directs, certificate was

granted the said Baker for obtaining letters of administration on the estate of the said Josiah Parker, deceased, with the will annexed, in due form.

A copy. Teste:

NATHANIEL YOUNG, *Clerk.*

STATE OF VIRGINIA, *Isle of Wight county*, to wit.

I do hereby certify, that, at a court held for the said county the 7th day of April, 1817, on the motion of Ann P. P. Cowper, who made oath thereto according to law, and who, together with Andrew Woodley and Arthur Smith, her securities, entered into and acknowledged a bond in the penalty of five thousand dollars, with a condition as the law directs, certificate was granted her for obtaining letters of administration de bonis non on the estate of Josiah Parker, deceased, with the will annexed, in due. Given under my hand, this 9th day of September, 1818.

NATHANIEL YOUNG, *Clerk.*

STATE OF VIRGINIA, *Isle of Wight county*, to wit.

I, William Mallary, a justice of the peace for the county aforesaid, do certify that Nathaniel Young, whose name is signed to the foregoing copy and certificate of administration, is the clerk of the county aforesaid, and that due faith and credit are due to his acts as such. Given under my hand this 30th day of September, 1818.

WILLIAM MALLARY, *P. J. P.*

STATE OF VIRGINIA, *Isle of Wight county*, to wit.

I, Nathaniel Young, clerk of the county aforesaid, do certify that William Mallary, whose name is signed to the above certificate, is the presiding magistrate in and for the said county, and that due faith and credit ought and should be paid to all his actings and doings as such. In testimony whereof, I have hereunto signed my name, and affixed the seal of my county, this 30th day of September, 1818.

[*Seal of office.*] NATHANIEL YOUNG, *Clerk.*

THE STATE OF OHIO, *Brown county*, ss.

I, William Shepherd, clerk of the court of common pleas within and for the county aforesaid, do hereby certify that the above and foregoing is truly copied from the records of said court. In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at Georgetown, this 3d day of May, A. D. 1827.

[*Seal.*] WILLIAM SHEPHERD, *C. B. C. P.*

Land Office Military Warrant No. 1,920.

To the principal surveyor of the lands set apart for the officers and soldiers of the Commonwealth of Virginia. This shall be your warrant to survey and lay off, in one or more surveys, for Col. Josiah Parker, his heirs or assigns, the quantity of six thousand six hundred sixty-six and two-thirds acres of land, due unto the said Josiah Parker in consideration of his services for three years as a colonel in the Virginia continental line, agreeable to a certificate from the Governor and Council, received into the land office.

Given under my hand and seal of the said office, this 21st day of November, in the year one thousand seven hundred and eighty-three.

JOHN HARVIE, *R. L. Office.*

72.

STATE OF VIRGINIA, to wit:

I, William Seldon, Register of the land office of the State aforesaid, do hereby certify that the foregoing is a true and examined copy of a military land bounty warrant, No. 1,920, issued for 6,666⅔ acres, to Josiah Parker, from the record thereof, now being and remaining in my custody, by virtue of my office aforesaid.

Given under hand and seal of office, at the city of Richmond, the 22d day of July, 1828.

WM. SELDON, *R. L. Off. Va.*

Land Office Military Warrant No. 1,920.

To the principal surveyor of the lands set apart for the officers and soldiers of the Commonwealth of Virginia. This shall be your warrant to survey and lay off, in one or more surveys, for Col. Josiah Parker, his heirs or assigns, the quantity of six thousand six hundred sixty-six and two thirds acres of land, due unto the said Josiah Parker in consideration of his services for three years as a colonel in Virginia continental line, agreeable to a certificate from the Governor and Council received into the land office.

Given under my hand and the seal of the said office, this 21st day of November, in the year one thousand seven hundred and eighty-three.

JOHN HARVIE, *R. L. Office.*

I certify that the within is a copy of the warrant in my possession, not satisfied.

Given under my hand and seal of office, this 28th day of June, one thousand eight hundred and twenty-six.

RICHARD C. ANDERSON, [L. S.]

General Land Office, 5th April, 1828.

I do hereby certify that the foregoing is a correct copy of the copy of the warrant on file in this office.

In testimony whereof, I have hereunto set my hand, and caused the seal of this office to be affixed at the city of Washington, on the day and year above written.

[*Seal of Office.*] GEO. GRAHAM, *Comm'r.*

Land Office Military Warrant No. 1,920.

To the principal surveyor of the lands set apart for the officers and soldiers of the Commonwealth of Virginia. This shall be your warrant to survey and lay off, in one or more surveys, for Col. Josiah Parker, his heirs or assigns, the quantity of six thousand six hundred sixty-six and two-thirds acres of land, due unto the said Josiah Parker in consideration of his services for three years as a Colonel in the Virginia continental line, agreeable to a certificate from the Governor and Council received into the land office.

Given under my hand and the seal of the said office, this 21st day of November, in the year one thousand seven hundred and eighty-three.

JOHN HARVIE.

I certify that the above is a copy of a warrant in my possession, not satisfied.

Given under my hand and seal of office, this 9th day of October, 1799.

RICHARD C. ANDERSON, [L. S.]

Land Office Military Warrant No. 3,320.

To the principal surveyor of the land set apart for the officers and soldiers of the Commonwealth of Virginia. This shall be your warrant to survey and lay off, in one or more surveys, for Isham Keith, his heirs or assigns, the quantity of two thousand six hundred sixty-six and two thirds acres of land due unto the said Isham Keith agreeable to a resolution of the General Assembly, passed on the 28th day of June, 1784, in consideration of his services as a Lieutenant; which resolution is received into the land office.

Given under my hand and the seal of the said land office, this 9th day of July, in the year one thousand seven hundred and eighty four.

JOHN HARVIE, *R. L. Office.*

I do certify that the above is a copy of a warrant in my possession, not yet satisfied.

Given under my hand and seal of office, this 23d day of December, 1816.

RICHARD C. ANDERSON, [L. S.]

I shall object to reading as evidence on the hearing of the case Wallace *ads.* Parker, the reading the above warrant. THOMAS SCOTT.

9th May, 1828. *Attorney for defendant.*

General Land Office, 3d October, 1817.

I certify that the within, on this sheet of paper, is a copy of military warrants, Nos. 1920 and 3,320, issued to Josiah Parker and Isham Keith, also of the certificates of the late Richard C. Anderson; and that they are correctly copied from the documents in this office.

In testimony whereof, I have hereunto set my hand, and caused to be affixed the seal of this office, at the city of Washington, on the day and year above written.

GEO. GRAHAM, *Comm'r.*

1787, *August 1st, No.* 386, *s. v. d.* 222, *A.*

Mace Clement enters 1,000 acres of land on part of a military warrant No. 738, on the northwest side the Ohio river, beginning at the mouth of Eagle creek, emptying into the Ohio below the mouth of Limestone; running up the river, with its meanders, three hundred poles on a right line, and from the same beginning down the river two hundred poles, with its meanders, when reduced to a right line, so as to be a line of five hundred poles in length; thence with the general course of the river, at right angles from each end of this line, for quantity.

A copy: RICHARD C. ANDERSON.

August 2d, 1787, *No.* 418, *s. v. d.* 239, *B.*

James Poage, assignee, enters 1,000 acres of land, part of a military warrant No. 14, on the Ohio river, beginning at the lower corner of Mace Clement's entry No. 380, on the bank of the river; running down the river 650 poles when reduced to a straight line; thence at right angles, and with Clement's lower line, to include the quantity.

A copy: RICHARD C. ANDERSON.

No. 1,695, *withdrawn and entered in* 286.

William Vause enters 1,000 acres of land, part of a military warrant No. 3,554, on the waters of the Ohio, beginning at the northwest corner of his

73.

former entry No. 1,693, running with his former N. 61° E. 500 poles, thence at right angles N. 29° W. for quantity.

A copy: RICHARD C. ANDERSON.

No. 1,696, *withdrawn and entered in* 286.

William Vause enters 1000 acres of land, part of a military warrant No. 3,554, beginning at the northeast corner of his former entry No. 1,695, running S. 29° E. 320 poles; thence at N. 61° E. 500 poles; thence N. 29° W. 320 poles; thence to the beginning.

A copy: RICHARD C. ANDERSON.

1788, *January 11th, No.* 1,700, 423 *acres, s. v. d. BI.* 577, *s. v. d.* 69 *D.*

Isham Keith enters 1,000 acres of land, part of a military warrant No. 3,320, on the waters of the Ohio, beginning at the northeast corner of William Vause's entry No. 1,696, running S. 29° E. 320 poles; thence N. 61° E. 500 poles; thence N. 29° W. 320 poles; thence to the beginning.

A copy: RICHARD C. ANDERSON.

1788, *January 11th, No.* 1,703, 490 *acres, s. v. d.* 466, *B.* 516 *acres, s. v. d.* 213, *D.*

Josiah Parker enters 1,000 acres of land, part of a military warrant No. 1,920, on the waters of the Ohio, beginning at the northeast corner of Isham Keith's entry No. 1,700; running S. 29° E. 320 poles; thence N. 61° E. 500 poles; thence N. 29° W. 320 poles; thence to the beginning.

A copy: RICHARD C. ANDERSON.

January 29th, 1799, *No.* 3,549, 213 *D.*

Josiah Parker enters 450 acres of land, on part of a military warrant No. 1,920, on White Oak creek, about 4 or 5 miles from the mouth, beginning at the southwest corner of Curry's and northwest corner to Heth; thence N. 45° W. 370, crossing White Oak, to a sycamore and hackberry marked with painted letters; thence S. 45° W. 370 poles to an ash and hackberry; thence S. 12° W. 30 poles to a stake; thence eastwardly to the beginning.

A copy: RICHARD C. ANDERSON.

1787, *August* 16, *No.* 1,317, 415 *A.*

Captain Henry Heth enters 1,000 acres of land, part of a military warrant No. 1,894, beginning at the southwest corner of George Weeden's entry No. 1,314, running east with Weeden's line 320 poles, thence at right angles north for quantity.

A copy: RICHARD C. ANDERSON.

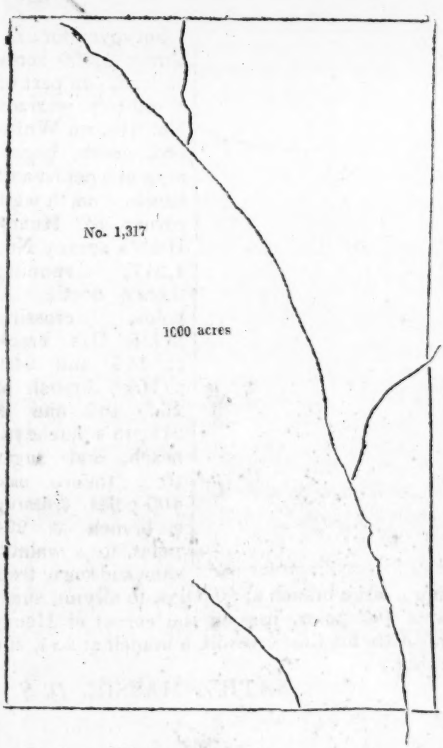
No. 1,397, *August 17th,* 415 *A.*

Captain James Curry enters 1,000 acres of land, part of a military warrant No. 348, beginning at the northwest corner of Henry Heth's entry No. 1,317; running with his line east 400 poles; thence off at right angles north for quantity.

A copy: RICHARD C. ANDERSON.

Objected to being used as evidence on the trial of the cause of Parker *vs.* Wallace, by defendant's counsel.

WM. SHEPHERD, *clerk.*



Surveyed for Henry Heth 1000 acres of land, on part of a military warrant No. 1,894, on the waters of Strait creek and White Oak creek, beginning at a hickory and ash, northwest corner to George Weedon's survey No. 1,314; running thence north 500 poles to a poplar and beach; thence east 320 poles, crossing a branch at 36, and one at 115 poles, to a beach and ash; thence south 500 poles, crossing a branch at 240 poles, to a large ash, elm, and sugar tree in a line of Weedon's survey; thence with said line west 320 poles, crossing a large branch at 20 poles, and one at 120 poles, to the beginning.

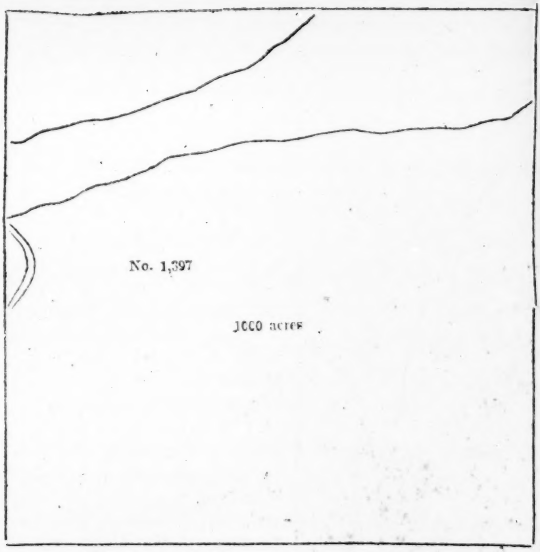
NATH'L MASSIE, *D. S.*

DUNCAN MCCARTY, } *C. C.*
WILLIAM LEEDON, }
GEORGE EDGINGTON, *Marker.*
March 27, 1794.

Examined and recorded May 29, 1794.

RICHARD C. ANDERSON, *S.*

74.



Surveyed for Jas. Curry 1,000 acres of land, on part of a military warrant No. 348, on White Oak creek, beginning at a poplar and beech, north west corner of Henry Heth's survey No. 1,317; running thence north 400 poles, crossing White Oak creek at 180 and 240, a large branch at 260, and one at 312, to a buckeye, beach, and sugar tree; thence east 400 poles, crossing a branch at 224 poles, to a walnut, elm, and sugar tree; thence south 400 poles, crossing a large branch at 80 poles, to a lynn, sugar tree, and dogwood; thence west 400 poles, passing the corner of Henry Heth's survey at 80 poles, and with his line crossing a branch at 284, and one at 364 poles, to the beginning.

NATH'L MASSIE, *D. S.*

DUNCAN MCCARTY, } *C. C.*
WILLIAM LEEDON, }
GEORGE EDGENTON, *Marker.*
March 27, 1794.

Examined and recorded.

RICHARD C. ANDERSON, *S.*

STATE OF KENTUCKY, *Jefferson county*, set.

Col. Richard C. Anderson personally appeared before me, a justice of the peace in and for the State and county aforesaid, and made oath that the foregoing entries and surveys are true copies from the records in his office.

Given under my hand and seal this 29th day of June, 1826.

MINER WHITE, *J. P. J. C.*

I, Warden Pope, clerk of the county court of Jefferson county in the State of Kentucky, and the keeper of the seal of said county, do certify that Minor White, Esquire, who has signed the above certificate, is a justice of the peace of the county aforesaid, and judge of the said court, duly commissioned and sworn, and that his official acts as such are entitled to full faith and credit; and that John Bell, Esquire, is the presiding judge of the said court.

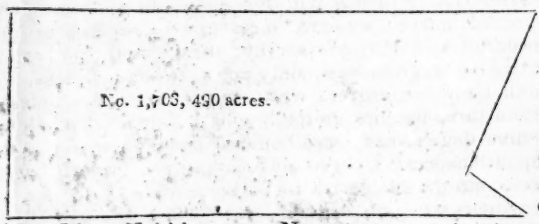
In witness whereof, I have hereto set my hand, and the seal of the county aforesaid, this 29th day of June, 1826, and in the 35th year of the Commonwealth.

[SEAL.] WARDEN POPE.

I, John Bell, presiding Judge of the county court of Jefferson county, in the State of Kentucky, do certify that Warden Pope is the clerk of said court and keeper of the seal of said county, that his above attestation is in due form of law, and entitled to full faith and credit.

Given under my hand and seal, this 29th day of June.

JOHN BELL, [SEAL.]



Surveyed for Josiah Parker 490 acres of land on part of a military warrant No. 1,920, on the waters of Red Oak creek, beginning at two beeches, northeast corner to Isham Keith's survey No. 1,700, runnning S. 29 E., 176 poles, to two beeches; thence N. 61 E., 448 poles, to a stake in the line of Nathaniel Foxe's survey, No. 554; thence with his line 62 poles to a buckeye, honey locust, and ash, southwest corner to said Foxe's survey; thence with another of his lines, N. 173 poles, to a hackberry, buckeye, and sugar tree, in said Foxe's line; thence S. 61 W., 487 poles, to the beginning.

NATHANIEL BEASLEY, *D. S.*

WILLIAM JACOBS, } *C. C.*
JAMES JACOBS, }
PHILEMON THOMAS, *Marker.*

December 2d, 1803.
February 27th, 1804.

STATE OF OHIO, AUDITOR OF STATE'S OFFICE,
Columbus, July 15th, 1828.

I, Ralph Osborn, Auditor of the State of Ohio, do hereby certify that the foregoing survey, No. 1,703, for 490 acres, is a true and correct copy taken from the records in this office. In testimony whereof, I have hereunto set my hand, and affixed the seal of office, the day and year aforesaid.

[SEAL.] R. OSBORN, *Auditor of State.*

JOHN QUINCY ADAMS, *President of the United States of America,*

To all to whom these presents shall come greeting: Know ye that in consideration of military services performed by Josiah Parker, for three years, a Colonel to the United States in the Virginia line on continental establishment, and in pursuance of an act of Congress of the United States, passed on the 10th day of August, in the year 1790, entitled "An act to enable the officers and soldiers of the Virginia line on continental establishment to obtain titles to certain lands lying northwest of the river Ohio, between the Little Miami and Scioto," and other acts of the said Congress, amendatory to the said act, there is granted by the United States unto Josiah C. Parker, devisee of the said Josiah Parker, a certain tract of land, containing five

hundred and ten acres, situate between the Little Miami and Scioto rivers, northwest of the river Ohio, on the waters of Red Oak and Eagle creeks, branches to the Ohio, being part of a military warrant No. 1,920, as by survey bearing date June 14th, 1826; beginning at a stake in Robert Stewart's pasture, south twenty degrees east, five poles and fifteen links from a sugar tree, and south fourteen degrees west, four poles and sixteen links from a beech, southeast corner to Isham Keith's entry, No. 1,700; thence north sixty-one degrees east, five hundred poles, to two buck eyes, near Samuel Kerr's fence; thence north twenty-nine degrees west, one hundred and fifty poles, to a large beech, elm and hickory, in the line of said Josiah Parker's survey of 490 acres, No. 1,703; thence with his line south sixty-one degrees west, three hundred and eighty-four poles, to two beeches near a branch, southwest corner of said Parker's survey; thence with another of his lines, north twenty nine degrees west, sixty poles, to three beeches in said line; thence south sixty-one degrees west, one hundred and sixteen poles, to a sugar tree and three beeches in the line of Isham Keith's entry; thence south twenty-nine degrees east, two hundred and ten poles, to the beginning, with the appurtenances. To have and to hold the said tract of land, with the appurtenances, unto the said Josiah C. Parker, and to his heirs and assigns for ever. In witness whereof, the said John Quincy Adams, President of the United States of America, hath caused the seal of the General Land Office to be hereunto affixed, and signed the same with his hand, at the city of Washington, the first day of February, in the year of our Lord, 1827, and of the independence of the United States of America the fifty-first.

JOHN Q. ADAMS.

By the President:

GEORGE GRAHAM,
Commissioner of the General Land Office. [Recorded, vol. 12, p. 20.]

STATE OF OHIO, *Brown county*, to wit:

Josiah Parker, complainant, against Cadwallader Wallace, defendant. Chancery.

The defendant in the above suit will please take notice that I shall, on the 19th day of the present month, between the hours of 8 o'clock in the morning and 6 in the evening, at the house of William Florer, in the town of Augusta, Bracken county, Kentucky, proceed to take the depositions of Thomas Young, Samuel Frazee, and others, to be used as evidence on the hearing of the above cause, pending in the court of common pleas in and for said county of Brown.

JOSIAH PARKER.

5th August, 1826.

The deposition of Samuel Frazee, of lawful age, taken at the house of William Florer, in the town of Augusta, Bracken county, Kentucky, this 19th day of August, 1826, between the hours of 8 o'clock in the morning and six in the evening, to be used as evidence upon the hearing of a suit in chancery depending in the court of common pleas for Brown county, Ohio, wherein Josiah Parker is complainant, and Cadwallader Wallace is defendant, taken on the part of the complainant. The deponent being first duly cautioned and sworn, deposeth and saith, that, about the last of May, 1779, that in going up the Ohio river in company with others, about 50 in number, we stopped just below the creek now called Eagle creek, on the

Kentucky side; that, while preparing for breakfast, an eagle flew across the river from the Ohio side, where it had a nest below said creek, and lit on a tree on the Kentucky side, and I killed the eagle. In the year 1790, in the month of May, I returned again to Kentucky: the creek was then known by the name of Eagle creek, and I suppose it got the name from the circumstance of my killing the eagle in 1779. The creek now called Eagle creek is the same that I killed the eagle at in 1779. Question by complainant's attorney. Where did the company of fifty men that were in company with, as before named, reside? Answer. They resided in different parts of the country, all being land jobbers. Question by same. How far above the now town of Ripley, in Brown county, Ohio, does Eagle creek put into the river Ohio? Answer. I suppose it may be one and a half miles, or perhaps two miles; but I am not certain what the distance may be. Question by same. Is or is not Eagle creek of which you have spoken the next creek but one above Ripley? Answer. I think it is. Question by same. Have you lived near to the creek called Eagle creek ever since the year 1790, and have you heard the creek called by any other name than Eagle creek? Answer. I have lived about 9 or 10 miles from the mouth of said creek ever since the year 1791, and have known the creek, and never heard it called by any other name but Eagle, until Mr. Parker, some two or three weeks past, said that Mr. Wallace called it Elk creek. Question by defendant's agent. 1st. Have you any interest in the land in dispute between the parties to which this deposition relates? Answer. I thought I had, but I do not now consider myself interested. 2d. Do you not hold Lucas Sullivant's title bond, or deed for part of the land, which bonds or deeds describes it as being part of Josiah Parker's 1,000 acre entry or survey? Answer. I do; and the bond calls for Parker's 1,000 acre entry or survey, 75 acres out of the survey; and if the land is lost he was to pay me the amount I paid him for it in horses or cash. 3d. Did any of the 50 men you speak of settle near what you now call Eagle creek between 1779 and 1790? Answer. Not that I know of. 4th. What part of the country did the land jobbers job it in in 1779? Answer. Over the whole district of Kentucky. 5th. What were the names of the principal land jobbers? Answer. I cannot tell the whole; there was two of the Freaks, two Morrises, three Halls, and William Harrod, Cole Sullivan, and many others. 6th. Was it not some dispute in 1790 or 1791, about Eagle creek? and was it not supposed to be the first creek below Limestone, on the Ohio side? Answer. I know nothing about it, or any dispute; I never heard it called any other name but Eagle creek. 7th. How long is it since you were at the mouth of what you now call Eagle creek? Answer. I cannot tell. 8th. Did you go over to the mouth of the said creek you now call Eagle when you killed the eagle in 1779? Answer. No, I did not, nor was not on that side of the river. Question by complainant. Were you ever at the mouth of Eagle creek, or on the waters of said creek? Answer. I was, and crossed over at the mouth in 1791, and frequently on the waters of the creek. Question by the same. Were you ever present when the 1,000 acre tract in the name of Josiah Parker was surveyed? if you were, state who made the survey, who were present when made, and whether lines and corners of the thousand acre tract were marked. Answer. I was present the whole time; Lucas Sullivant made the survey upwards of 20 years past; John Dowdon, William Jacobs, a man of the name of Young, Abraham Shepherd, was along when a part of one line was run, an old Mr. Kerr, were present; the lines was marke[illegible]nd the corners then made. Question

70.

by the same. Who now lives within the survey above spoken of? and how long have they lived upon said thousand acre tract? Answer. There is Thomas Doniphan, a Mr. Kerr, Mr. McCoy, and two men of the name of William Jacobs; Thomas Doniphan about 5 or 6 years, Jacobs about 15 years, Kerr about 15 or 20 years, McCoy about the same length of time as Jacobs. The defendant's agent objected to the question next to the last above, put by the plaintiff's attorney, and the witness's answer thereto, as being improper; the validity of which objections is reserved for the decision of the court. Do you not know that part of said 1,000 acres was surveyed, and are you sure that Mr. Sullivant did not survey more acres than 1,000 when you were along? and did he not do other surveying at the same time? Answer. Sullivant told me that he surveyed 1,000 acres; Mr. Sullivant done other surveying at the same time, adjoining the 1,000 acre survey in the name of Parker? I understand you to say in the first part of your deposition as saying that you did not know Eagle creek by any name until 1790. If I am right, please state it. Answer. I did not know it by any name until 1790.

SAMUEL FRAZEE.

The deposition of Squire Frazee, of lawful age, taken at the same time and place, and to be used upon the same occasion as the foregoing deposition of Samuel Frazee. The deponent being duly cautioned and sworn, deposeth and saith: That he emigrated to Kentucky in the year 1791; that the creek now called Eagle creek, in the State of Ohio, some short distance above the town of Ripley, was then called Eagle creek, and it has been so called ever since; the creek alluded to is the same spoken of by Samuel Frazee. I have resided about 9 or 10 miles from the mouth of said creek ever since, except the two first years. Myself and my brother Samuel Frazee resided in Kentucky since the year 1791, and have been resident in the State ever since.

SQUIRE FRAZEE.

The deposition of Thomas Young, of lawful age, taken at the same time and place, and to be used upon the same occasion as the foregoing deposition of Samuel Frazee. The deponent being first duly cautioned and sworn, deposeth and saith: That he descended the Ohio river in the years 1773, 1775, and 1781; that, until the year 1784, he does not recollect to have heard any name given to a creek now called Eagle creek, which puts into the river on the Ohio side, just below Charlestown bar. Since the year 1784, he has known it by the name of Eagle creek: that in 1785, it was notoriously known by the name of Eagle creek to all those with whom he conversed about the creeks, and those exploring that quarter of the country. In the year 1783 he became an inhabitant of the State of Kentucky, and has been a resident ever since. Question by defendant's agent. What part of the State of Kentucky have you always resided in? Answer. In Fayette, Mason, and Bourbon counties. How long in each, and from what year to what year have you resided in each county? Answer. I believe about 6 years in Fayette, and about 20 in Mason, and the balance in Bourbon—say from 1783 to 1791 in Fayette, and from 1791 to 1812, as well as I recollect, in Mason county, I then moved to Bourbon county, and remained until the fall of 1824, since which time I have resided in Mason county. How many years since you were last at the mouth of the creek you call Eagle creek? Answer. In June last. Did you merely go down or up the river by the mouth, or was you there by land? Answer. I was on my way up the river from Augusta, and passed the creek in a skiff. How long was it before Harmar's

defeat by the Indians that you knew the creek which you refer to by the name of Eagle creek? Answer. I do not recollect when Harmar's defeat was: I have told you the time I knew it by the name of Eagle creek, and the time I knew it before I knew it had the name. From whom did you learn the name of said creek? Answer. It is impossible for me to tell at this time. In 1785, to whom was this creek notoriously known by the name of Eagle creek? Answer. To Nathaniel Massie, O'Banion, and General Lytle. Where did Massie, O'Banion, and Lytle reside in 1785? Answer. I do not know; they were in the woods, and occasionally at Lexington. What time in 1784 or 1785, did you know the creek certainly by the name of Eagle creek first? Answer. In the fall of 1784. How did you first get to hear the name? Answer. I do not know. How can you state, or from what data can you state the time 1784 and 1785 certainly, as being the time you first knew the creek by the name of Eagle creek? Answer. By information I received from Massie and O'Banion. Question. Was you on Eagle creek in 1784 and 1785, any distance above its mouth? and how often have you been on it after that above its mouth? Answer. No; I have been three or four times on Eagle creek since that time, on my way from New Market to Maysville. Question. What data have you that enables you to say that the creek was notoriously known in 1785? Answer. From conversations I had with those that visited that part of the country before named. Question. And who were those? Answer. Nathaniel Massie, John O'Banion, and William Lytle, and others that I do not recollect, chain carriers, markers, &c. Question. Was the creek known by the name of Eagle creek when the office opened for making locations in the Virginia military district northwest of Ohio? Answer. I do not know. Question. Was there not a good deal of dispute on the subject of what was Eagle creek in 1790; and was it not contended by many that it was the first creek below Limestone? Answer. I never heard any dispute about its name, or any contention about it. Question. What are the names of the creeks below Limestone on the Ohio side, to the mouth of the Little Miami, and what were they named in 1785 or 1787? Answer. I do not know that I know all the creeks between Limestone and the Little Miami. I know Eagle creek, White Oak, and Indian creek; I knew Indian creek by that name ever since 1775. Question. How many creeks, and what creeks are between the mouth of White Oak and Limestone? you will please name them as they are from White Oak up. Answer. Four creeks—Red Oak, Straight creek, Eagle creek, and Three Mile; but there may be other small branches, but I do not know their names. He also states that he does not know the order in which they are situated. Question. Are the creeks you have named not all nearly of the same size of each other? Answer. I think not. Question. Which is the largest? Answer. I suppose White Oak, but I am not certain. Question. What time was the country first settled at and near the mouth of Eagle creek? Answer. I do not know. How long after peace was declared between the UnitedStates and Great Britain was it that you knew the creek you have described as being Eagle creek? Answer. I believe it was the same year.

THOMAS YOUNG.

The deposition of Luther Calvin of lawful age, taken at the same time and place, and to be used upon the same occasion as the deposition of Samuel Frazee. The deponent being first duly cautioned and sworn, deposeth and saith:

That he is acquainted with a creek called Eagle creek putting into the Ohio river just below Charlestown bar and next above Red Oak creek put-

ting into the Ohio, immediately above the town of Ripley to the best of my recollection, I have known it to bear the name of Eagle creek for 48 years. I was descending the Ohio river with about twenty persons, and see an eagle's nest in a standing sycamore in the point above the creek. The company then called it Eagle creek. He further states, that he has resided in or near Washington since the year 1785, in February; he never knew it to bear any other name. He has been in the habit of hunting deer and Indians, and frequently in the habit of crossing said creek, and conversing with others that knew it by that name of Eagle creek.

Question by complainant. Since the year 1785, has the creek you speak of as Eagle creek been generally known and called by that name? and was it and its name notorious?

Answer. It was known and notoriously known by the name of Eagle creek, and by no other name.

Question by same. What distance, in the year 1785 and ever since, have you resided from the mouth of Eagle creek?

Answer. Between four and five miles.

Question by defendant's agent. What were the names of the twenty persons that descended the river with you forty-eight years since?

Answer. David Richie, Jacob Spears, Henry Spears, Solomon Spears, John Retan, John Crist, Henry Crist, William Linn, Jesse Busan, and one Barkickhammer, two of the Poe's, James Kerr, John Hayley, and several others that I cannot recollect now.

Question. From what part of the country did this company put out from?

Answer. From Washington country, Pennsylvania, about twenty miles above Pittsburg.

Question. Did this expedition go down before or after the one in which Mr. Samuel Frazee was with?

Answer. I do not know.

Question. To whom wasthe creek you have described notoriously known in 1785?

Answer. To Simon Kenton, Nicholas Washburn, Cornelius Washburn, Stephen Calvin, and many more.

Question. Are you the father of Stephen and James Calvin, who live near Georgetown, in Brown county?

Answer. They say so.

Question. How long before General Wayne's treaty with the Indians was it, that you first knew the creek you have described as Eagle creek?

Answer. I have answered that question before, by stating the time I first became acquainted with the creek.

Question. What data have you that enables you to swear positively that you have known Eagle creek ever since 1785?

Answer. I moved to the State of Kentucky in 1785, and was in the habit of hunting and crossing the river from the time he first settled in the State of Kentucky, and frequently hunted on Eagle creek.

Question. How old was your son Stephen when you moved to Kentucky?

Answer. I believe about twelve or fourteen years of age.

Question. Did you know the creek you have described by the name of Eagle creek when the office opened for making locations in the Virginia military district northwest of the Ohio river?

defeat by the Indians that you knew the creek which you refer to by the name of Eagle creek? Answer. I do not recollect when Harmar's defeat was: I have told you the time I knew it by the name of Eagle creek, and the time I knew it before I knew it had the name. From whom did you learn the name of said creek? Answer. It is impossible for me to tell at this time. In 1785, to whom was this creek notoriously known by the name of Eagle creek? Answer. To Nathaniel Massie, O'Banion, and General Lytle. Where did Massie, O'Banion, and Lytle reside in 1785? Answer. I do not know; they were in the woods, and occasionally at Lexington. What time in 1784 or 1785, did you know the creek certainly by the name of Eagle creek first? Answer. In the fall of 1784. How did you first get to hear the name? Answer. I do not know. How can you state, or from what data can you state the time 1784 and 1785 certainly, as being the time you first knew the creek by the name of Eagle creek? Answer. By information I received from Massie and O'Banion. Question. Was you on Eagle creek in 1784 and 1785, any distance above its mouth? and how often have you been on it after that above its mouth? Answer. No; I have been three or four times on Eagle creek since that time, on my way from New Market to Maysville. Question. What data have you that enables you to say that the creek was notoriously known in 1785? Answer. From conversations I had with those that visited that part of the country before named. Question. And who were those? Answer. Nathaniel Massie, John O'Banion, and William Lytle, and others that I do not recollect, chain carriers, markers, &c. Question. Was the creek known by the name of Eagle creek when the office opened for making locations in the Virginia military district northwest of Ohio? Answer. I do not know. Question. Was there not a good deal of dispute on the subject of what was Eagle creek in 1790; and was it not contended by many that it was the first creek below Limestone? Answer. I never heard any dispute about its name, or any contention about it. Question. What are the names of the creeks below Limestone on the Ohio side, to the mouth of the Little Miami, and what were they named in 1785 or 1787? Answer. I do not know that I know all the creeks between Limestone and the Little Miami. I know Eagle creek, White Oak, and Indian creek; I knew Indian creek by that name ever since 1775. Question. How many creeks, and what creeks are between the mouth of White Oak and Limestone? you will please name them as they are from White Oak up. Answer. Four creeks—Red Oak, Straight creek, Eagle creek, and Three Mile; but there may be other small branches, but I do not know their names. He also states that he does not know the order in which they are situated. Question. Are the creeks you have named not all nearly of the same size of each other? Answer. I think not. Question. Which is the largest? Answer. I suppose White Oak, but I am not certain. Question. What time was the country first settled at and near the mouth of Eagle creek? Answer. I do not know. How long after peace was declared between the UnitedStates and Great Britain was it that you knew the creek you have described as being Eagle creek? Answer. I believe it was the same year.

THOMAS YOUNG.

The deposition of Luther Calvin of lawful age, taken at the same time and place, and to be used upon the same occasion as the deposition of Samuel Frazee. The deponent being first duly cautioned and sworn, deposeth and saith:

That he is acquainted with a creek called Eagle creek putting into the Ohio river just below Charlestown bar and next above Red Oak creek put-

ting into the Ohio, immediately above the town of Ripley to the best of my recollection, I have known it to bear the name of Eagle creek for 48 years. I was descending the Ohio river with about twenty persons, and see an eagle's nest in a standing sycamore in the point above the creek. The company then called it Eagle creek. He further states, that he has resided in or near Washington since the year 1785, in February; he never knew it to bear any other name. He has been in the habit of hunting deer and Indians, and frequently in the habit of crossing said creek, and conversing with others that knew it by that name of Eagle creek.

Question by complainant. Since the year 1785, has the creek you speak of as Eagle creek been generally known and called by that name? and was it and its name notorious?

Answer. It was known and notoriously known by the name of Eagle creek, and by no other name.

Question by same. What distance, in the year 1785 and ever since, have you resided from the mouth of Eagle creek?

Answer. Between four and five miles.

Question by defendant's agent. What were the names of the twenty persons that descended the river with you forty-eight years since?

Answer. David Richie, Jacob Spears, Henry Spears, Solomon Spears, John Retan, John Crist, Henry Crist, William Linn, Jesse Busan, and one Barkickhammer, two of the Poe's, James Kerr, John Hayley, and several others that I cannot recollect now.

Question. From what part of the country did this company put out from?

Answer. From Washington country, Pennsylvania, about twenty miles above Pittsburg.

Question. Did this expedition go down before or after the one in which Mr. Samuel Frazee was with?

Answer. I do not know.

Question. To whom wasthe creek you have described notoriously known in 1785?

Answer. To Simon Kenton, Nicholas Washburn, Cornelius Washburn, Stephen Calvin, and many more.

Question. Are you the father of Stephen and James Calvin, who live near Georgetown, in Brown county?

Answer. They say so.

Question. How long before General Wayne's treaty with the Indians was it, that you first knew the creek you have described as Eagle creek?

Answer. I have answered that question before, by stating the time I first became acquainted with the creek.

Question. What data have you that enables you to swear positively that you have known Eagle creek ever since 1785?

Answer. I moved to the State of Kentucky in 1785, and was in the habit of hunting and crossing the river from the time he first settled in the State of Kentucky, and frequently hunted on Eagle creek.

Question. How old was your son Stephen when you moved to Kentucky?

Answer. I believe about twelve or fourteen years of age.

Question. Did you know the creek you have described by the name of Eagle creek when the office opened for making locations in the Virginia military district northwest of the Ohio river?

Answer. I do not remember when the land office opened; I heard of its opening.

Question. What circumstances enables you to say that you moved to Kentucky in 1785?

Answer. I am sure of moving to Kentucky in 1785.

Question. What are the names of the creeks on the Ohio side below the mouth of Limestone creek: please name them in the order in which they stand from Limestone to mouth of Bullskin?

Answer. Three Mile, Eagle creek, I believe Straight creek, Red Oak, White Oak.

Question. Which is the largest, Eagle creek or Three Mile creek?

Answer. Eagle creek—three times as big, and more too.

Question. Did you not hear of a dispute, about the year 1791, as respected which had been originally named Eagle creek?

Answer. I never heard any dispute about the name of the creek since I knew it.

Question by complainant. Have you a perfect recollection of the names of the creeks in rotation, from Limestone down to Bullskin?

Answer. I do not know that I can name them as they are situated.

Question by same. Are you certain that the creek you speak of as Eagle creek puts into the Ohio side next below Three Mile creek, and immediately below Charlestown bar?

Answer. I am.

Question by same. After reflection, would you say Straight creek puts into the Ohio above or below Red Oak?

Answer. Below Red Oak creek.

Question by defendants. Before you answered the three last questions, was you not informed by other persons of your mistake?

Answer. I had a hint that I had named the creeks wrong.

Question. What is your age?

Answer. I am in my seventy-eighth year since November last.

Question. How far is the mouth of Eagle creek above Ripley, in Brown county?

Answer. I do not recollect how far it is.

Question. Did you not say a little while since, that you thought it was five or six miles above Ripley?

Answer. I said seven or eight miles, but cannot tell the distance.

his
LUTHER + CALVIN.
mark

It is admitted that Francis Wells, before whom the depositions of Samuel Frazee, Squire Frazee, Thomas Young, and Luther Calvin, were this day taken, is a justice of the peace in and for the county of Bracken, State of Kentucky. For Cadwallader Wallace,

AUGUST 19, 1826. MATHEW BONNER.

BRACKEN COUNTY, KENTUCKY, to wit:

I certify that the foregoing depositions of Samuel Frazee, Squire Frazee, Thomas Young, and Luther Calvin, were taken before me, sworn to and subscribed by the deponents, (said depositions, except the captions and questions propounded, being wholly written by myself,) at the time and

place in the caption to the deposition of Samuel Frazee, and agreeable to the notice herewith enclosed. Given under my hand, as justice of the peace in and for said county, this 19th August, 1826.

FRANCIS WELLS, *J. P.*

The deposition of Nicholas Washburn, of lawful age, taken this 29th August, 1826, to be used as evidence on the hearing of a suit in chancery pending in the court of common pleas, Brown county, Ohio, wherein Josiah Parker is complainant, and Cadwallader Wallace is defendant. The deponent being first duly cautioned and sworn, deposeth and saith, being interrogated, that, some time in the month of March, in the year 1785, the deponent, in company, went down the Ohio river from Limestone, with George Mefford, to the mouth of a creek he then called Eagle creek, and went up said creek some short distance to some beaver traps. Said creek is the first below the creek then and yet called Three Mile creek, and the first above Red Oak creek. Eagle creek puts into the Ohio river immediately below Charlestown bar. The deponent has lived generally, since the year 1785, in the neighborhood of said Eagle creek, and thinks, ever since the said year, it has been generally and notoriously known by the hunters and explorers in that neighborhood by the name of Eagle creek, and never until yesterday heard it called by any other name.

NICH. WASHBURN.

THE STATE OF OHIO, *Brown county*, ss.

This is to certify, that the within deposition was this day taken at my office, in Georgetown, by consent of counsel, for the purpose mentioned in the caption, and that the same is in the handwriting of Martin Marshall, Esq. Given under my hand this 29th day of August, 1826.

WM. BUTT,
Master Commissioner in Chancery, B. C.

The deposition of William Middleton, of lawful age, taken before the master commissioner in chancery for Brown county, at his office, this 22d day of August, 1826, by consent of parties, to be used as evidence on the hearing of a suit in chancery pending in the court of common pleas in and for said county, wherein Josiah Parker is complainant, and Cadwallader Wallace is defendant. The deponent being first duly cautioned and sworn, deposeth and saith: Question by complainant. Are you acquainted with a creek called Eagle creek, putting into the Ohio river on the Ohio side? and how long have you been acquainted with same? also, describe where it puts into said river. Answer. I have been acquainted with the creek called Eagle creek, putting into the Ohio river on the Ohio side, near the lower end of the sand bar called Charlestown bar, since and during the time from the year 1798. The mouthing of Eagle creek, in the Ohio river, is about one mile and a half above the mouth of Red Oak creek, on the same side, and about two miles above the town of Ripley; and is commonly said to be four miles below the mouth of Big Three Mile creek, on the Ohio side of the river. Question by same. Does or does not any other creek, except Eagle creek, put into the Ohio river on the Ohio side, between Red Oak and Three Mile creeks? and where does Red Oak creek put into said river, in relation to the town of Ripley, in Brown county, Ohio? Answer. Eagle creek is the only creek that puts into the Ohio river on the Ohio side between Big Three Mile and Red Oak creeks; Red Oak puts into the Ohio

river directly above the upper end of the town of Ripley. Question by defendant's agent. How long is it since you were last at the mouth of Eagle creek? Is the mouth of said creek in the same place now that it was in 1785 or 1790? Is the bar in the river, that you call Charlestown bar, in the same place, or was it in the Ohio river in 1785 or 1790? Answer. I was at the mouth of Eagle creek about fifteen days since; its mouthing into the Ohio river appears to be where it was when I first became acquainted with it; what its situation might have been in 1785 or 1790, I know not; the bar in the river, called Charlestown bar, appears to be principally in the same place, apparently increasing by deposites at the lower end. Is not the navigation of the Ohio by keel-bottomed and flat-bottomed boats somewhat difficult when the Charlestown bar is open and uncovered with water? Was you at the mouth of Eagle creek by land, or did you just pass it by in ascending or descending the river? Answer. When the Ohio river is very low, I understand that the channel by which keel and flat-bottomed boats generally pass is on that side of the bar next the Kentucky shore. When I was at the mouth of Eagle creek, as before observed, it was in ascending the river in a skiff.

WM. MIDDLETON.

THE STATE OF OHIO, *Brown county*, ss.

This is to certify, that the foregoing deposition was taken in presence and by consent of the parties, for the purpose mentioned in the caption, and that the answers by the deponent are his own handwriting. Given under my hand, August 22d, 1826.

WM. BUTT,
Master Commis. in Chancery,
Brown county afd.

The deposition of Joseph Washburn, of lawful age, taken at the office of the master commissioner in chancery for Brown county, Ohio, in the town of Georgetown, this 29th August, 1826, to be used as evidence on the hearing of a suit in chancery depending in the court of common pleas for said county, wherein Josiah Parker is complainant, and Cadwallader Wallace is defendant. The deponent being first duly cautioned and sworn, deposeth and saith, being interrogated. Question by complainant. Are you acquainted with a creek putting into the river Ohio, on the Ohio side, called Eagle creek? If you are, state how long you have been acquainted with it. Answer by deponent. I am acquainted with a creek called Eagle creek, putting into the Ohio river on the Ohio side, and have been acquainted with the same ever since the month of April, in the year 1785. Question by same. Please describe the place or neighborhood where said creek puts into said river. Answer. The creek now called Red Oak, which puts into the Ohio immediately above the town of Ripley, is the first creek that puts into the Ohio on the Ohio side below Eagle creek, and Three Mile creek the first above Eagle creek; said Eagle creek puts into the Ohio immediately below Charlestown bar. Question by same. Was or was not Eagle creek generally known by that name to the hunters and explorers of the country in the year 1785? or what time was it generally known by that name? Answer by deponent. The creek before described as Eagle creek was generally known and called Eagle creek by the hunters and explorers, from the year 1785, and ever since. I have ever since generally lived in the neigh-

79.

borhood of said creek, and never heard any other person call it by any other name.

JOSEPH WASHBURN.

THE STATE OF OHIO, *Brown county*, ss.

This is to certify, that the foregoing deposition was this day taken at my office in Georgetown, by consent of counsel, for the purpose in the caption mentioned, and that it is in the handwriting of Martin Marshall, Esq. Given under my hand August 29th, 1826.

WM. BUTT,
Master Commissioner in Chancery, B. C.

The depcsition of Stephen Calvin, of lawful age, taken at the clerk's office in the town of Georgetown, county of Brown, and State of Ohio, this 5th day of August, 1826, to be used as evidence on the hearing of a suit in chancery, depending in the court of common pleas for said county, wherein Josiah Parker is complainant, and Cadwallader Wallace is defendant; taken on the part of the complainant. The deponent being sworn, deposeth and saith, that he was fifty-four years old in the month of April last; that his father, Luther Calvin, settled at Simon Kenton's station, on Lawrence creek, in Mason county, in the State of Kentucky, near Washington, at which time this deponent was about twelve or fourteen years of age; that, to the best of his recollection, he became acquainted with a stream which empties into the Ohio river, (being the first stream above Red Oak creek on the Ohio side, Red Oak creek putting in immediately above Ripley,) which stream was called, and afterwards always known by this deponent, by the name of Eagle creek.

Question by complainant's counsel. Have you lived near said creek you have described as Eagle creek ever since your first acquaintance with it? and it was generally known and called by the name of Eagle creek?

Answer. I have lived what might be called near to it ever since that time—not further than twelve miles from it at any time since; and I have always known it by the name of Eagle creek, and no other name, and which was so called by all those whom I ever heard speak of it.

Question by same. Did you ever hear of the circumstance from which said creek took the name of Eagle creek? if you did, state it.

Answer by deponent. I never did, to the best of my recollection, until yesterday.

Question by defendant's agent. Could you say positively that you have known Eagle creek thirty-eight years?

Answer by deponent. I think I can.

Question by same. How much longer than 38 years have you known it?

Answer by deponent. I think I have known it longer, but I cannot be positive.

Question by same. Are there not many creeks, nearly of the same size of each other, between the mouth of Scioto and the Little Miami?

Answer. I think there are.

Question by same. Who was the person that told you yesterday of the circumstance that gave rise to the name of Eagle creek?

Answer. Alexander Gilliland?

STEPHEN CALVIN.

The deposition of James Calvin, of lawful age, at the same time and place, and to be used upon the same occasion as the foregoing deposition of

Stephen Calvin. The deponent being duly sworn, deposeth and saith, that, thirty-five years ago or upwards, he became acquainted with a stream called Eagle creek, which empties into the Ohio river on the Ohio side, being the first creek above Red Oak creek, which empties into the Ohio river immediately above Ripley, and that he heard the hunter's from Kenton's station speak of Eagle creek before he became acquainted with it.

Question by complainant. Have you been acquainted with Eagle creek, and conversant in the neighborhood of the same, ever since your first knowledge of it? and has it been generally known by that name?

Answer by deponent. Yes, I have; and it has been generally known by that name, as far as I have understood.

The defendant's agent objected to the part of the deposition which is in these words, "and that he heard the hunters from Kenton's station speak of Eagle creek before he became acquainted with it," as being improper; the validity of which objection is reserved for the decision of the court.

his
JAMES × CALVIN,
mark.

STATE OF OHIO, *Brown county*, sct.

The foregoing depositions of Stephen Calvin and James Calvin were taken, subscribed, and sworn to, by deponents, at the time and place in the caption mentioned, before me, a justice of the peace in and for said county. Given under my hand this 5th August, 1826.

FRANKLIN SHALER, *J. P.*

All objections to taking of the depositions on this sheet before a justice of the peace, and to their having been written by Mr. John Shepherd, instead of the master commissioner, are waived. August 5th, 1826.

MATHEW BONNER, *Agent for def'ts.*

The deposition of Solomon Cox, of lawful age, taken at the clerk's office in Georgetown, Brown county, Ohio, this 5th day of August, 1826, to be used as evidence on the hearing of a suit in chancery, depending in the court of common pleas for said county, wherein Josiah Parker is complainant, and Cadwallader Wallace is defendant; taken on the part of complainant. The deponent being duly sworn, deposeth and saith, that, the spring after Harmar's defeat, he became acquainted with a stream called Eagle creek, which empties into the Ohio river on the Ohio side, one mile and a half or two miles above the month of Red Oak creek at Ripley; that he has hunted on it about thirty years, and that it has been generally known by that name ever since.

Question by defendant's agent. What time did you first begin to run barges up and down the Ohio river?

Answer by deponent. The summer before Wayne's battle I assisted in running a packet boat up and down the Ohio river.

his
SOLOMON + COX.
mark.

STATE OF OHIO, *Brown county*, ss.

The foregoing deposition of Solomon Cox was taken, sworn to, and subscribed before me, a justice of the peace for said county, at the time and place in the caption mentioned. Given under my hand this 5th August, 1826.

FRANKLIN SHALER, *J. P.*

82.

All objections to the taking of this deposition before a justice of the peace, and to their having been written by Mr. John Shepherd, instead of the master commissioner, are waived. August 5th, 1826.

MATHEW BONNER, *Agent for def't.*

STATE OF OHIO, *Brown Common Pleas.*

JOSIAH C. PARKER *vs.* CADWALLADER WALLACE.

The defendant in the above suit, and Thomas Morris, Esq., his attorney, will please take notice that I shall, on the first day of August next, if fair, if not, then on the next fair day, attend with the surveyor of said county at the mouth of Eagle creek, in said county, to execute and make a survey agreeably to the order of said court in said suit, during which I shall, before said surveyor, take sundry depositions; also, before the master commissioner in chancery of said court, on the 5th day of said month, at his office in Georgetown, proceed to take sundry depositions which survey and depositions are to be used as evidence upon the hearing of the above suit in chancery, pending in the court aforesaid. July 15th, 1826.

Yours, &c.,

JOSIAH C. PARKER.

As attorney for the within named Wallace, in the within named suit, I acknowledge service of the within notice. July 19th, 1826.

THOMAS MORRIS.

In pursuance of an order of court, herewith returned, I proceeded, on the 1st day of August, 1826, having been first notified by the plaintiff, Josiah Parker, for that purpose, to make the following described survey, viz: Beginning at the mouth of Eagle creek, at the beginning of Mace Clement's entry, at A, on the plat No. 386;* thence up the Ohio river, with the meanders thereof, south 30" east 38 poles, south 44½° east 60 poles, south 62½ east 62 poles, south 68° east 72 poles, south 60° east 45 poles, south 56° east 39 poles, to the southeast corner of Mace Clement's entry, at B on the plat, it being the distance meandered, equal to 300 poles when reduced to a right line. Beginning again at the mouth of Eagle Creek, thence down the Ohio river, with the meanders thereof, north 22½° west 149 poles, north 13½' west 51 poles, to C on the plat, at the southwest corner of Mace Clement's entry; thence north 48¾', east 283.7 poles, to D on the plat; thence south 41¾' east 485 poles, to E on the plat, containing 1,000 acres. Beginning again at the southeast corner of James Poage's entry, No. 386, at C on the plat; thence down the Ohio river, with the meanders thereof, north 13½', west 222 poles, north 20' west 206 poles, crossing the mouth of Red Oak at 138 poles, at F on the plat, north 30½' west 142 poles, passing Williams' tavern at 3 poles, at G on the plat, north 46' west 110 poles, passing the steam mill at 15 poles, at H on the plat, and the mouth of Cornick's run at 109 poles, at I, north 32' west 34 poles, north 62½' west 58 poles, to J on the plat, at the southwest corner of James Poage's entry, at two buckeyes and a sugar tree marked as a corner; thence north 60½° east 305 poles, to the northeast corner of James Poage's entry, at K on the plat, crossing Cornick's run at 156 poles, and the Ripley road at 166 poles; thence south 29½' east 585 poles, to the other northeast corner of James Poage's entry,

* See original record for this plat.

at L on the plat; thence south 48¼' east 308 poles, to the beginning, containing 1,000 acres. Beginning again at the northeast corner of James Poage's entry, at K on the plat; thence north 29° west 300 poles, to M on the plat, crossing Cornick's run and the Ripley road at 194 poles; thence north 61° east 2,000 poles, to N on the plat, crossing the Ripley road and Cornick's run at 100 poles, passing the northeast corner of Vause's second entry, No. 1,695, at 500 poles, at O on the plat; crossing Red Oak creek at 570 poles; crossing Red Oak again at 910 poles; crossing Red Oak twice at 940 poles, passing the northeast corner of Vause's third entry at 1,000 poles, at P on the plat; crossing Red Oak at 1,344 poles, passing the northeast corner of Isham Keith's at 1,500 poles, at the corner made by General Beasley for Parker's southeast corner, at Q on the plat; passing Wallace's and Sullivant's southeast corner at 1,622 poles, at S on the plat; the corner is on two beeches and a small poplar; passing Wallace's southeast corner at 1,944 poles, on a sugar tree and small buckeye at T on the plat. Beginning again at the two beeches and small poplar at S on the plat, shown to me by William Jacobs as the southwest corner of Parker's survey, as made by Sullivant; thence north 29' west 328 poles, to an old corner, at V on the plat, on two beeches and an ash; crossing the Georgetown road at 110 poles, and a branch of Red Oak at 130 poles, and passing Wallace's northwest corner at 140 poles, on two beeches with old marks, at R on the plat; north 61' east 500 poles, to W on the plat, at an old corner on a black walnut, sugar tree and beech, crossing Red Oak three times from 100 to 120 poles, and a branch of Eagle creek at 472 poles; thence south 29' east 340 poles, to the old line, at Z on the plat, crossing a branch at 28 poles; thence south 61' west 500 poles, to the beginning, containing 1,000 acres. Beginning again at T on the plat, Wallace's southeast corner; thence north 172 poles to a blue ash and two sugar trees, at U on the plat, crossing the Georgetown road at 66 poles.

WILLIAM WALL, *S. B. C.*

I certify the foregoing to be a true copy of the field notes, and of the above described survey, filed August 21st, 1826.

W. SHEPHERD, *Clerk.*

STATE OF OHIO, *Brown Supreme Court.*

JOSIAH C. PARKER *vs.* CADWALLADER WALLACE.

Pursuant to an order of court, and after notice having been given, herewith returned, I proceeded, on the 3d day of July, 1828, to make the following described survey, by order of the defendant: Beginning at the mouth of Eagle creek, at the beginning of Mace Clement's entry, No. 386, at A on the plat*; thence up the Ohio river, with the meanders thereof, south 30' east 38 poles, south 44½' east 60 poles, south 62½' east 62 poles, south 68° east 72 poles, south 60 east 45 poles, south 56 east 29 poles, to the upper corner of Mace Clement's entry, at B on the plat, it being the distance meandered, equal to 300 poles when reduced to a right line. Beginning again at the mouth of Eagle Creek; thence down the Ohio river with the meanders thereof, north 22½ west 149 poles, north 13½ west 51 poles, to C on the plat, the lower corner of Clement's said entry, and upper corner of James Poage's entry, No. 418; thence north 13½ west 122 poles, north 20 west 206 poles, crossing the mouth of Red Oak creek 138 poles, at E on

*See original record for this plat.

81.

the plat; north 30½ west 142 poles, passing Williams's tavern at 3 poles, at E on the plat; north 46 west 110 poles, passing the steam mill at 12 poles, and the mouth of Cornick's run at 109 poles, at H on the plat; north 55 west 82 poles, to I on the plat, lower corner to Poage's said entry; thence north 61½, east 305 poles, to the lower back corner of Poage's said entry, at K on the plat, crossing Cornick's run at 150 poles, and the Ripley road at 166 poles; thence north 29° west 320 poles, to the southwesterly corner to William Vause's entry, No. 1,695, crossing Cornick's run and the Ripley road at 194 poles, to L on the plat; thence north 61 east 200 poles, crossing Cornick's run at 80 poles, and the Ripley road 84 poles, passing the northeast corner of said Vause's entry, No. 1,695 on the plat, crossing Red Oak at 546 poles; crossing Red Oak again at 880 poles, passing the south corner of said Vause's entry, No. 1,696, at 1,000, at P on the plat; crossing Red Oak creek again at 1,338 poles, passing the southerly corner of Isham Keith's entry, No. 1,700, at 1,500 poles, at the corner made by General Beasley for Josiah Parker's southwesterly corner of 510 acres, No. of entry 1,703, at Q on the plat; passing Cadwallader Wallace's southwest corner of 300 acres, and southwest corner of said Parker's survey, as made by Sullivant, at 1,616 poles, at R on the plat; the corner is on two beeches and a poplar; passing said Wallace's corner at 1,934 poles, at a sugar tree and buckeye, at Z on the plat, to two buckeyes, at M on the plat; thence north 29° west 150 poles, to a beech, elm, and hickory, at Y on the plat; thence north 61° east 73 poles, passing two sugar trees and ash due south 4 poles, at N on the plat, to a stake at T on the plat; thence west 50 poles to a buckeye and honey locust, at U on the plat; thence north 180 poles to a buckeye and sugar tree, at V on the plat; thence south 61° west 498 poles, crossing Red Oak three times from 380 to 400 poles, to two beeches with very old marks, at W on the plat; thence south 29° east 120 poles, to three beeches at J on the plat; thence south 61 west 116 poles, to three beeches and a sugar tree at E on the plat; thence south 29° east 207 poles, to the corner at Q, as before described. Beginning at said three beeches, at J on the plat; thence south 29° east 207 poles, passing said Wallace's northwest corner at 62 poles, marked at the letter S on the plat, crossing Red Oak creek at 74 poles to the corner at R, as before described.

JEPTHA BEASLEY,
Surveyor of Brown County.

WILLIAM PERRY, } *Chain.*
JOHN MARTIN, }

I [redacted] certify, under the seal of my office, that, on the 21st day of November, 1783, a military land bounty warrant for 6,666⅔ acres of land, No. 1,920, issued to Josiah Parker, from the land office of Virginia, and that it does not appear upon the records of said office that any other military land bounty warrant ever issued to said Josiah Parker, or to any other individual of that name, other than the aforesaid warrant No. 1,920.

Teste: WM. SELDON, *R. L. O. Va.*

I hereby make oath that I have examined the records of the land office, and that to the best of my knowledge and belief it does not appear that any other military land bounty warrant has issued for the services of said Parker, but the one aforesaid. WM. SELDON, *R. L. O. Va.*

Wm. Seldon, R. L. Off. Va., being first sworn, made oath before me this 22d day of July, 1828, to the facts stated in the foregoing affidavit.

[L. S.] E. W. ROOTES, *Recorder.*

at L on the plat; thence south 48¼' east 308 poles, to the beginning, containing 1,000 acres. Beginning again at the northeast corner of James Poage's entry, at K on the plat; thence north 29° west 300 poles, to M on the plat, crossing Cornick's run and the Ripley road at 194 poles; thence north 61° east 2,000 poles, to N on the plat, crossing the Ripley road and Cornick's run at 100 poles, passing the northeast corner of Vause's second entry, No. 1,695, at 500 poles, at O on the plat; crossing Red Oak creek at 570 poles; crossing Red Oak again at 910 poles; crossing Red Oak twice at 940 poles, passing the northeast corner of Vause's third entry at 1,000 poles, at P on the plat; crossing Red Oak at 1,344 poles, passing the northeast corner of Isham Keith's at 1,500 poles, at the corner made by General Beasley for Parker's southeast corner, at Q on the plat; passing Wallace's and Sullivant's southeast corner at 1,622 poles, at S on the plat; the corner is on two beeches and a small poplar; passing Wallace's southeast corner at 1,944 poles, on a sugar tree and small buckeye at T on the plat. Beginning again at the two beeches and small poplar at S on the plat, shown to me by William Jacobs as the southwest corner of Parker's survey, as made by Sullivant; thence north 29' west 328 poles, to an old corner, at V on the plat, on two beeches and an ash; crossing the Georgetown road at 110 poles, and a branch of Red Oak at 130 poles, and passing Wallace's northwest corner at 140 poles, on two beeches with old marks, at R on the plat; north 61' east 500 poles, to W on the plat, at an old corner on a black walnut, sugar tree and beech, crossing Red Oak three times from 100 to 120 poles, and a branch of Eagle creek at 472 poles; thence south 29' east 340 poles, to the old line, at Z on the plat, crossing a branch at 28 poles; thence south 61' west 500 poles, to the beginning, containing 1,000 acres. Beginning again at T on the plat, Wallace's southeast corner; thence north 172 poles to a blue ash and two sugar trees, at U on the plat, crossing the Georgetown road at 66 poles.

WILLIAM WALL, *S. B. C.*

I certify the foregoing to be a true copy of the field notes, and of the above described survey, filed August 21st, 1826.

W. SHEPHERD, *Clerk.*

STATE OF OHIO, *Brown Supreme Court.*

JOSIAH C. PARKER *vs.* CADWALLADER WALLACE.

Pursuant to an order of court, and after notice having been given, herewith returned, I proceeded, on the 3d day of July, 1828, to make the following described survey, by order of the defendant: Beginning at the mouth of Eagle creek, at the beginning of Mace Clement's entry, No. 386, at A on the plat*; thence up the Ohio river, with the meanders thereof, south 30' east 38 poles, south 44½' east 60 poles, south 62½' east 62 poles, south 68° east 72 poles, south 60 east 45 poles, south 56 east 29 poles, to the upper corner of Mace Clement's entry, at B on the plat, it being the distance meandered, equal to 300 poles when reduced to a right line. Beginning again at the mouth of Eagle Creek; thence down the Ohio river with the meanders thereof, north 22½ west 149 poles, north 13½ west 51 poles, to C on the plat, the lower corner of Clement's said entry, and upper corner of James Poage's entry, No. 418; thence north 13½ west 122 poles, north 20 west 206 poles, crossing the mouth of Red Oak creek 138 poles, at E on

*See original record for this plat.

81.

the plat; north 30½ west 142 poles, passing Williams's tavern at 3 poles, at E on the plat; north 46 west 110 poles, passing the steam mill at 12 poles, and the mouth of Cornick's run at 109 poles, at H on the plat; north 55 west 82 poles, to I on the plat, lower corner to Poage's said entry; thence north 61½, east 305 poles, to the lower back corner of Poage's said entry, at K on the plat, crossing Cornick's run at 150 poles, and the Ripley road at 166 poles; thence north 29° west 320 poles, to the southwesterly corner to William Vause's entry, No. 1,695, crossing Cornick's run and the Ripley road at 194 poles, to L on the plat; thence north 61 east 200 poles, crossing Cornick's run at 80 poles, and the Ripley road 84 poles, passing the northeast corner of said Vause's entry, No. 1,695 on the plat, crossing Red Oak at 546 poles; crossing Red Oak again at 880 poles, passing the south corner of said Vause's entry, No. 1,696, at 1,000, at P on the plat; crossing Red Oak creek again at 1,338 poles, passing the southerly corner of Isham Keith's entry, No. 1,700, at 1,500 poles, at the corner made by General Beasley for Josiah Parker's southwesterly corner of 510 acres, No. of entry 1,703, at Q on the plat; passing Cadwallader Wallace's southwest corner of 300 acres, and southwest corner of said Parker's survey, as made by Sullivant, at 1,616 poles, at R on the plat; the corner is on two beeches and a poplar; passing said Wallace's corner at 1,934 poles, at a sugar tree and buckeye, at Z on the plat, to two buckeyes, at M on the plat; thence north 29° west 150 poles, to a beech, elm, and hickory, at Y on the plat; thence north 61° east 73 poles, passing two sugar trees and ash due south 4 poles, at N on the plat, to a stake at T on the plat; thence west 50 poles to a buckeye and honey locust, at U on the plat; thence north 180 poles to a buckeye and sugar-tree, at V on the plat; thence south 61° west 498 poles, crossing Red Oak three times from 280 to 400 poles, to two beeches with very old marks, at W on the plat; thence south 29° east 120 poles, to three beeches at J on the plat; thence south 61 west 116 poles, to three beeches and a sugar tree at E on the plat; thence south 29° east 207 poles, to the corner at Q, as before described. Beginning at said three beeches, at J on the plat; thence south 29° east 207 poles, passing said Wallace's northwest corner at 62 poles, marked at the letter S on the plat, crossing Red Oak creek at 74 poles to the corner at R, as before described.

JEPTHA BEASLEY,
Surveyor of Brown County.

WILLIAM PERRY, } *Chain.*
JOHN MARTIN, }

I [illegible] certify, under the seal of my office, that, on the 21st day of November, 1783, a military land bounty warrant for 6,666⅔ acres of land, No. 1,920, issued to Josiah Parker, from the land office of Virginia, and that it does not appear upon the records of said office that any other military land bounty warrant ever issued to said Josiah Parker, or to any other individual of that name, other than the aforesaid warrant No. 1,920.

Teste: WM. SELDON, *R. L. O. Va.*

I hereby make oath that I have examined the records of the land office, and that to the best of my knowledge and belief it does not appear that any other military land bounty warrant has issued for the services of said Parker, but the one aforesaid. WM. SELDON, *R. L. O. Va.*

Wm. Seldon, R. L. Off. Va., being first sworn, made oath before me this 22d day of July, 1828, to the facts stated in the foregoing affidavit.

[L. S.] E. W. ROOTES, *Recorder*

James Monroe, President of the United States of America, to all to whom these presents shall come, greeting: Know ye, that, in consideration of military services performed by Thomas Parremore, a captain for the war, to the United States, in the Virginia line on continental establishment, and in pursuance of an act of the Congress of the United States, passed on the 10th day of August, in the year 1790, entitled "An act to enable the officers and soldiers of the Virginia line on continental establishment to obtain titles to certain lands lying northwest of the river Ohio, between the Little Miami and Scioto," and other acts of the said Congress amendatory to the said act there is granted by the United States unto Cadwallader Wallace, assignee of Peter P. Mayo, assignee of John C. Parremore, devisee of said Thomas Parremore, a certain tract of land containing three hundred acres, situate between the Little Miami and Scioto rivers, northwest of the river Ohio, as by survey bearing date the 17th day of December, 1823, and bounded and described as follows, to wit: Survey of three hundred acres of land on part of a military warrant No. 6,537, in favor of said John C. Parremore, on the waters of Eagle and Red Oak creeks. Beginning at two beeches on the west side of a small branch, south corner to Josiah Parker's survey, No. 1,703; thence south twenty-nine degrees east one hundred and forty poles, crossing a large branch of Red Oak creek at twelve, and a road at thirty poles, to two beeches and two small poplars, one of the poplars cut down in the line of Presley Nevill's survey, No. 1,431; thence with said line north sixty-one degrees east, three hundred and twenty-one poles, crossing a road and several branches, and passing the northeast corner of said survey, and with the line of Alexander Parker's survey, No. 3,525, to a stake three poles north sixty degrees east from the northeast corner of Parker's said survey, in the line of John Hook's survey, No. 2,213; thence with said line north one hundred and fifty-eight poles, crossing a branch at fifteen, a road at fifty-eight, and a branch at eighty-six poles, to two sugar trees and a blue ash in said line, and in the line of Josiah Parker's said survey; thence with Parker's line south sixty one degrees west four hundred poles, crossing a branch at forty-eight, the road at one hundred and seventy-nine, and the large branch three hundred and seventy poles, and a small branch at three hundred and ninety-eight poles, to the beginning, with the appurtenances. To have and to hold the said tract of land, with the appurtenances, unto the said Cadwallader Wallace, and his heirs and assigns for ever.

In witness whereof, the said James Monroe, President of the United States of America, hath caused the seal of the General Land Office to be hereunto affixed, and signed the same with his hand, at the City of Washington, the thirteenth day of April, in the year of our Lord 1824, and the independence of the United States of America the forty-eighth.

JAMES MONROE.

By the President: GEORGE GRAHAM,

Commissioner of the General Land Office.

Recorded in volume 11 page 188.

GEORGE HILL, *Clerk.*

I certify that Thomas Parramore was originally entitled to the bounty lands granted unto C. Wallace by the within patent. General Land Office, April 13, 1824. GEO. GRAHAM, *Commissioner.*

To the Honorable the General Assembly: 82.

The request of Josiah Parker humbly representeth, that he was, in October, 1775, appointed by the Assembly Major of the 5th regiment on continental establishment; that he was, in August, 1776, promoted to the rank of Lieutenant Colonel, and the April following had the honor of receiving a full Colonel's commission in the same regiment, which he retained until August, 1778, when he resigned it to General Washington, on the banks of the North river, after the arrival of Compte D'Estaing and the French alliance. That previous to all this, he raised the first company of minutemen on the south side of James river, and was on actual duty at the Great Bridge with his company until his promotion in the continental line. That since his resignation, he has, on every invasion, been employed against the enemy, and with active and disagreeable commands, with the rank still of Colonel in the militia, which he satisfied himself with, though inferior to the rank he held in the army, as he felt the satisfaction of serving his country; and during all this his services in the militia, he never received a shilling of money of any sort from this State or the continent; notwithstanding, by the act of Assembly allowing a bounty of lands to the officers and soldiers, he is precluded from any share, because he did not serve three years in a continued line; that, nevertheless, he is emboldened to request the Assembly will allow him *a Colonel's allowance of lands*, because they have resolved that General Stephens and Lawson should receive theirs; and although each of these are general officers of the militia, yet they were only Colonels at the same time with your petitioner, who remained longer in the continental army than either of them.

The foregoing is a true copy from the original. April 18th, 1827.
Teste: GEORGE W. MUNFORD,
Keeper of the Rolls of Virginia.

In the House of Delegates, Tuesday, the 18th of November, 1783.

Mr. Mann Page reported from the Committee of Propositions and Grievances, that the committee had, according to order, had under their consideration the petition of Josiah Parker, to them referred, and had agreed upon a report and come to a resolution thereupon, which he read in his place, and afterwards delivered in at the clerk's table, where the same were again twice read and agreed to by the House, as followeth: It appears to your committee that in October, 1775, the said Josiah Parker was appointed a Major of the 5th regiment on continental establishment, in which rank he acted until August, 1776, when he was appointed Lieutenant Colonel; and in April, 1777, he received a full Colonel's commission in the same regiment, and acted in that rank until August 1778, when he resigned. It also appears to your committee, that, since that resignation of the said Josiah Parker, he hath, upon every invasion of this State by the enemy, been upon duty with the militia, in the rank of Colonel, with the command of the whole militia on the south side of James river after the invasion by General Philips, until the arrival of the Count de Grasse. Resolved, That the petition of the said Josiah Parker, praying that he may be allowed the bounty in lands by law given to a Colonel in the continental line, is reasonable. 1783, Nov. 20th.

Teste: JOHN BECKLEY, *C. H. D.*
Agreed to by the Senate. WILL. DREW, *C. S.*

The foregoing is a true copy from the original. April 18th, 1827.
Teste: GEORGE W. MUNFORD,
Keeper of the Rolls of Virginia.

I do certify that Colonel Josiah Parker is entitled to the proportion of land allowed a Colonel of the continental line for three years' service. Council Chamber, November 21st, 1783.

BENJAMIN HARRISON.

THOMAS MERIWETHER.

The foregoing is an examined copy of an advice of Council of the State of Virginia, filed in the land office of that State; and in pursuance of which a military land bounty warrant for 6,666⅔ acres issued to the said Parker.

Given under my hand and the seal of my office, this 17th day of April, 1837.

WM. SELDON,
R. L. Office, Va.

[L. S.]

VIRGINIA, to wit:

I, William B. Giles, Governor or Chief Magistrate of the State aforesaid, do hereby certify and make known to all whom it may concern, that George W. Munford, whose name is subscribed to the annexed document, is, as he styles himself, keeper of the rolls of Virginia; and that William Seldon, whose name is also subscribed to another document hereunto annexed, is, as he styles himself, Register of the Land Office of Virginia, both duly appointed and qualified according to law; and to all their official acts respectively as such, full faith, credit, and authority are had, and ought to be given. In testimony whereof, I have subscribed my name, and caused the great seal of the State to be hereunto affixed. Done at the city of Richmond, the twenty-eighth day of April, in the year of our Lord one thousand eight hundred and twenty-seven, and of the Commonwealth the fifty-first.

[L. S.] WM. B. GILES.

THE STATE OF OHIO, *Brown county*, ss.

To the Mayor of the City of Richmond, in the Commonwealth of Virginia, James E. Heath, and John Herron: Know ye, that we, trusting to your fidelity and provident circumspection in diligently examining the Register of the Land Office of the Commonwealth of Virginia, and others, witnesses, as well on behalf of Josiah C. Parker, complainant, as well on behalf of Cadwallader Wallace, defendant, in a suit in chancery now depending and undetermined in our Supreme Court for the county of Brown, and State of Ohio, do command you, or either of you, that, at such certain days and places as you shall appoint, (the adverse party legal notice thereof,) the witnesses aforesaid before you call and cause to come, and them diligently examine on the Holy Evangelist of Almighty God, or on solemn affirmation; and those examinations into our said Supreme Court, holden at Georgetown, distinctly and plainly, without delay, you shall send and certify under your hand and seal enclosed, returning also to us this writ. Witness the Honorable Calvin Pease, Chief Judge of our said court, at the court-house, this 8th day of November, in the year of our Lord one thousand eight hundred and twenty-seven, and in the twenty-sixth year of this State.

[S. L.] JOHN H. SHEPHERD, *Clerk S. C. B. C. O.*

The execution of this commission appears in a certain schedule hereunto annexed.

JOSEPH TATE,
Mayor of the City of Richmond and sole acting Commissioner.

83.

THE STATE OF OHIO, *Brown County Supreme Court.*

JOSIAH C. PARKER,
vs.
CADWALLADER WALLACE. } *In Chancery.*

The plaintiff in the above suit, and his attorney, will take notice, that, on the first Monday in February next, 1828, between the hours of 9 o'clock in the morning and 4 o'clock in the evening of that day, at the Mayor's office in the City of Richmond, in the Commonwealth of Virginia, I shall proceed to take the depositions of the Register of the Land Office of that Commonwealth, and of others, to be used in evidence on the trial of said suit.

5th Nov. 1827. CADWALLADER WALLACE.

As attorney for the within named complainant, I acknowledge service of the within notice. M. MARSHALL.

Nov. 7th, 1827.

Depositions of witnesses, produced, sworn, and examined, on the fifth day of February, A. D. eighteen hundred and twenty-eight, (to which day the execution of the commission hereto annexed, and herein mentioned, was duly continued, no witness having been produced on the first Monday, (the 4th February, 1828,) between the hours of 9 a. m. and 4 o'clock p. m. at the Mayor's office in the city of Richmond, and Commonwealth of Virginia, by virtue of a commission issuing from the Supreme Court for the county of Brown, and State of Ohio, to the Mayor of the City of Richmond aforesaid, James E. Heath, and John Herron, or either of them, directed, for the examination of the Register of the Land Office of the Commonwealth of Virginia, and other witnesses, as well on behalf of Josiah C. Parker, complainant, as well as on behalf of Cadwallader Wallace, defendant, in a suit in chancery now pending and undetermined in said court.

William H. Richardson, clerk of the Council of State, being produced, sworn, and examined, on behalf the defendant, deposeth as follows:

To the following interrogatory proposed by agent for the defendant—

1st. Is there among the records and files of the Council of State of Virginia, any paper of record or on file, authorizing the issue of a land warrant to Col. Josiah Parker, other than the petition of the said Josiah Parker to the Legislature of the Commonwealth of Virginia, and the resolution of said Legislature, allowing him a bounty in land?

He answers that he hath examined the records and files of the Executive Department of Virginia, from December, 1781, to October, 1791. That they contain no record of an advice of Council within that period, for allowing land bounty to Josiah Parker. That there is on file in said department an authentic copy of a joint resolution of the Senate and House of Delegates of Virginia, dated the 18th November, 1783, and declaring reasonable the petition of Josiah Parker, to be allowed the bounty in lands by law given to a Colonel in the continental line. [A copy of which is hereto annexed marked (A.)] That he cannot find any other paper or document on the files between the aforesaid periods of December, 1781, and October, 1791, concerning the subject; that several other officers appear to have obtained their land bounty in the same way, and at the same time said Josiah Parker obtained his.

Second interrogatory—by defendant. Do you know any thing further material to the interests of the defendant in this cause? He answers, that,

from December, 1781, to October, 1791, and for a much longer period, he hath found but a single advice of Council on record for allowing land bounty to any officer or soldier, and in that case the Governor appears to have doubted whether, under particular circumstances, the claimant was entitled, and submitted it to the Council, for their opinion, on the 3d February, 1784. This case was that of Dr. Trezvant. That it was, at one time, the duty of the Commissioner of War to grant certificates to the officers and soldiers, upon which *alone* they received their land warrants; that the office of Commissioner of War was abolished in October, 1782, and the duties transferred to the Executive, or such other public officers into whose line they may, in the opinion of the Governor and Council, more properly fall; that the records and files of the Executive Department, down to about the year 1787, are very imperfect, and that it is probable either that no advice of Council was at that time necessary for obtaining land warrants, or that they were not recorded.

WM. H. RICHARDSON,
Clerk Council of State Virginia.

Mayor's Office, City of Richmond.—The taking of depositions, in pursuance of the foregoing commission, is further continued until the 6th February, 1828, at the instance of defendant's agent.

JOSEPH TATE, *Mayor and acting Commissioner.* *Feb. 5th,* 1828.

Mayor's Office, City of Richmond.—On motion of defendant's agent, the further execution of the foregoing commission is continued until 7th February, 1828.

JOSEPH TATE, *Mayor and acting Commissioner.* *Feb. 6th,* 1828.

Mayor's Office, City of Richmond.—On motion of defendant's agent, the further execution of the foregoing commission is continued until the 8th of February, 1828.

JOSEPH TATE, *Mayor and acting Commissioner.* *Feb. 7th,* 1828.

Mayor's Office, City of Richmond.—On motion of agent for defendant, the further execution of the foregoing commission is continued until 9th February, 1828.

JOSEPH TATE, *Mayor and acting Commissioner.* *Feb. 8th,* 1828.

Mayor's Office, City of Richmond.—On motion of defendant's agent, the further execution of the foregoing commission is continued until the 11th February, 1828.

JOSEPH TATE, *Mayor and acting Commissioner.* *Feb. 9th,* 1828.

Mayor's Office, City of Richmond.—On motion of defendant's agent, the further execution of the foregoing commission is continued until the 12th February, 1828.

JOSEPH TATE, *Mayor and acting Commissioner.* *Feb. 11th,* 1828.

Mayor's Office, City of Richmond.—On motion of defendant's agent, the further execution of the foregoing commission is continued until the 13th February, 1828.

JOSEPH TATE, *Mayor and acting Commissioner.* *Feb. 12th,* 1828.

Mayor's Office, City of Richmond.—On motion of defendant's agent, the further execution of the foregoing commission is continued until the 14th February, 1828.

JOSEPH TATE, *Mayor and acting Commissioner.* *Feb.* 1828.

84.

Mayor's Office, City of Richmond, February 14th, 1828.—On motion of defendant's agent, the further execution of the foregoing commission is continued until 15th February, 1828.

JOSEPH TATE, *Mayor and acting Commissioner.*

Mayor's Office, City of Richmond, February 15th, 1828.—On motion of defendant's agent, the further execution of the foregoing commission is continued until the 16th February, 1828.

JOSEPH TATE, *Mayor and acting Commissioner.*

Mayor's Office, City of Richmond, February 16th, 1828.—On motion of defendant's agent, the further execution of the foregoing commission is continued until the 18th February, 1828.

JOSEPH TATE, *acting Commissioner.*

Mayor's Office, City of Richmond, February 18th, 1828.—On motion of defendant's agent, the further execution of the foregoing commission is continued until the 19th February, 1828.

JOSEPH TATE, *Mayor and acting Commissioner.*

Mayor's Office, City of Richmond, February 19th, 1828.—On motion of defendant's agent, the further execution of the foregoing commission is continued until the 20th February, 1828.

JOSEPH TATE, *Mayor and acting Commissioner.*

Mayor's Office, City of Richmond, February 20th, 1828.—On motion of defendant's agent, the further execution of the foregoing commission is continued until 21st February, 1828.

JOSEPH TATE, *Mayor and acting Commissioner.*

Mayor's Office, City of Richmond, February 21st, 1828.—On motion of defendant's agent, the further execution of the foregoing commission is continued until the 22d February, 1828.

JOSEPH TATE, *acting Commissioner.*

Mayor's Office, City of Richmond, February 22d, 1828.—On motion of defendant's agent, the further execution of the foregoing commission is continued until the 23d February, 1828.

JOSEPH TATE, *acting Commissioner.*

Mayor's Office, City of Richmond, February 23d, 1828.—On motion by defendant's agent, the further execution of the foregoing commission is continued until the 25th February, 1828.

JOSEPH TATE, *acting Commissioner.*

Mayor's Office, City of Richmond, February 25th, 1828.—On motion by defendant's agent, the further execution of the foregoing commission is continued until the 26th February, 1828.

JOSEPH TATE, *acting Commissioner.*

Mayor's Office, City of Richmond, February 26th, 1828.—On motion of defendant's agent, the execution of the foregoing commission is continued until the 27th February, 1828.

JOSEPH TATE, *Mayor and acting Commissioner.*

Mayor's Office, City of Richmond, February 27th, 1828.—On motion of defendant's agent, the further execution of the foregoing commission is continued until 28th February, 1828.

JOSEPH TATE, *Mayor and acting Commissioner.*

Mayor's Office, City of Richmond, February 28th, 1828.—On motion of defendant's agent, the further execution of the foregoing commission is continued until the 29th instant.

JOSEPH TATE, *Mayor and acting Commissioner.*

Mayor's Office, City of Richmond, February 29th, 1828.—On motion of defendant's agent, the further execution of the foregoing commission is continued until the 1st March, 1828.

JOSEPH TATE, *acting Commissioner.*

Mayor's Office, City of Richmond, March 1st, 1828.—On motion of defendant's agent, the further execution of the foregoing commission is continued until the 3d instant.

JOSEPH TATE, *Mayor and acting Commissioner.*

Mayor's Office, City of Richmond, March 3d, 1828.—On motion of defendant's agent, the further execution of the foregoing commission is continued until the 4th instant.

JOSEPH TATE, *Mayor and acting Commissioner.*

Mayor's Office, City of Richmond, March 4th, 1828.—On motion of defendant's agent, the further execution of the foregoing commission is continued until the 5th instant.

JOSEPH TATE, *Mayor and acting Commissioner.*

Mayor's Office, City of Richmond, March 5th, 1828.—On motion of defendant's agent, the further execution of the foregoing commission is continued until the 6th instant.

JOSEPH TATE, *Mayor and acting Commissioner.*

Mayor's Office, City of Richmond, March 6th, 1828.—On motion of defendant's agent, the further execution of the foregoing commission is continued until the 7th instant.

JOSEPH TATE, *Mayor and acting Commissioner.*

Mayor's Office, City of Richmond, March 7th, 1828.—On motion of defendant's agent, the further execution of the foregoing commission is continued until the 8th instant.

JOSEPH TATE, *Mayor and acting Commissioner.*

Mayor's Office, City of Richmond, March 8th, 1828.—On motion of defendant's agent, the further execution of the foregoing commission is continued until the 10th instant.

JOSEPH TATE, *Mayor and acting Commissioner.*

Mayor's Office, City of Richmond, March 10th, 1828.—On motion of defendant's agent, the further execution of the foregoing commission is continued until the 11th instant.

JOSEPH TATE, *Mayor and acting Commissioner.*

88.

Mayor's Office, City of Richmond, March 11th, 1828.—On motion of defendant's agent, the further execution of the foregoing commission is continued until the 12th instant.

JOSEPH TATE, *Mayor and acting Commissioner.*

Mayor's Office, City of Richmond, March 12th, 1828.—On motion of defendant's agent, the further execution of the foregoing commission is continued until the 13th instant.

JOSEPH TATE, *Mayor and acting Commissioner.*

Mayor's Office, City of Richmond, March 13th, 1828.—On motion of defendant's agent, the further execution of the foregoing commission is continued until the 14th instant.

JOSEPH TATE, *Mayor and acting Commissioner.*

Mayor's Office, City of Richmond, March 14th, 1828.—On motion of defendant's agent, the further execution of the foregoing commission is continued until the 15th instant.

JOSEPH TATE, *Mayor and acting Commissioner.*

Mayor's Office, City of Richmond, March 15th, 1828.—On motion of defendant's agent, the further execution of the foregoing commission is continued until the 17th instant.

JOSEPH TATE, *Mayor and acting Commissioner.*

Mayor's Office, City of Richmond, March 17th, 1828.—On motion of defendant's agent, the further execution of the foregoing commission is continued until the 18th instant.

JOSEPH TATE, *Mayor and acting Commissioner.*

Mayor's Office, City of Richmond, March 18th, 1828.—On motion of defendant's agent, the further execution of the foregoing commission is continued until the 19th instant.

JOSEPH TATE, *Mayor and acting Commissioner.*

Mayor's Office, City of Richmond, March 19th, 1828.—On motion of defendant's agent, the further execution of the foregoing commission is continued until the 20th instant.

JOSEPH TATE, *Mayor and acting Commissioner.*

Mayor's Office, City of Richmond, March 20th, 1828.—On motion of defendant's agent, the further execution of the foregoing commission is continued until the 21st instant.

JOSEPH TATE, *Mayor and acting Commissioner.*

Mayor's Office, City of Richmond, March 21st, 1828.—The defendant's agent stated that, owing to the indisposition of Mr. Seldon, the Register of the land office of the Commonwealth of Virginia, which hitherto and now renders it impracticable to take his examination, he had no witness to examine.

I, Joseph Tate, mayor of the city of Richmond and sole acting commissioner, do hereby certify and return that William H. Richardson, clerk of the Council of State, on the 5th day of February, 1828, was by me duly sworn, according to the established forms of the Commonwealth of Virginia, [the 5th day of February, 1828, being the day to which the execution of the annexed commission was duly continued from the 4th, the day appointed,]